

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS,

v.

KAREN READ.

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* Docket No. 2282CR00117

BEFORE THE HONORABLE BEVERLY CANNONE
FRIDAY, MAY 17, 2024
TESTIMONY OF MATTHEW MCCABE

APPEARANCES:

For the Commonwealth:

BY: ADAM LALLY, A.D.A.
LAURA MCLAUGHLIN, A.D.A.

For the defendant:

BY: DAVID YANNETTI, ESQ.
ALAN JACKSON, ESQ.
ELIZABETH LITTLE, ESQ.

Dedham, Massachusetts
Room 25

Christine D. Blankenship, CVR
Court Reporter/Transcriber

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Matthew McCabe				
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1 (Court in session.)

2 (Defendant is present with counsel.)

3 (Jury in.)

4 THE COURT: May we have Mr. McCabe, please.

5 THE CLERK: I'm going to have you raise your hand one
6 more time.

7 MATTHEW MCCABE-SWORN

8 THE COURT: Mr. Lally, whenever you're ready.

9 MR. LALLY: Thank you're your Honor.

10 RESUMED DIRECT EXAMINATION

11 BY MR. LALLY:

12 Q Good morning, sir.

13 A Good morning.

14 Q When we left off yesterday you had gone to bed on the
15 28th, correct?

16 A Yes, that is correct.

17 Q And at some point you woke up later in the morning on
18 the 29th, correct?

19 A Yes, on Saturday morning.

20 Q Do you recall, sir, what awoke you on that morning?

21 A Yes, I do.

22 Q And what was that, sir?

23 A I awoke to the screaming of, "Jen, Jen, Jen, Jen," so
24 when I woke up I thought there was somebody in my bedroom,
25 and I kind of snapped up out of bed, what the hell's going

1 on, looking around the room, realized my wife was actually
2 on the phone.

3 Q And the screaming that you heard, how loud was that,
4 sir?

5 A It was loud enough to wake me up from a dead sleep. I
6 could hear it. It was loud. Obviously, I was laying in
7 bed and realizing after my wife was laying right next to me
8 on the phone but it was a loud, Jen, Jen, Jen. It was
9 repetitive.

10 Q And do you know approximately what time that was, sir?

11 A Yes, shortly before 5:00 a.m.

12 Q Did you recognize the voice, sir, that you heard
13 screaming?

14 A I did not recognize the voice.

15 Q And as far as that phone conversation went on for --
16 well, let me ask you this first. As far as that phone
17 conversation was concerned, could you hear both sides of
18 that conversation?

19 A Yes, I could.

20 Q And that was based on the volume of the person speaking
21 on the other end, correct?

22 A Correct.

23 Q And eventually, were you able to recognize or identify
24 the voice on the other end of your wife's conversation?

25 A Yes, I asked my wife, "What the hell is going," after I

1 woke up and popped up, looking around the room to find out
2 who was in my bedroom, assuming it was one of my kids
3 screaming, I asked my wife, "What is going on," and I could
4 hear her saying, "I'm on the phone with Karen. She can't
5 find John."

6 Q And from the course of that conversation continued to
7 while you were in your bedroom; is that correct?

8 A Yes, that conversation continued for a couple minutes.
9 I could hear the dialogue and then again right back to Jen,
10 Jen, Jen, the repeating of my wife's name again.

11 Q And as far as the dialogue was concerned, specifically
12 from the defendant Ms. Read's perspective, what, if
13 anything, do you recall about that?

14 A She didn't know where John was and the last time she
15 saw him was at the Waterfall.

16 Q About how long did that initial phone call or that
17 initial conversation between your wife and the defendant go
18 on for?

19 A From when I woke up, a minute-and-a-half, two minutes.
20 I don't know the exact time give or take.

21 Q And after -- do you recall how that conversation ended,
22 did you wife hang up or --

23 A Yes, they hung up the phone. I was laying in the bed.
24 My wife was next to me, and I think my wife immediately
25 called somebody else, was calling friends that lived near

1 the Waterfall that happened to be out that evening, and she
2 started making those phone calls.

3 Q And as your wife was making those phone calls what, if
4 anything, did you say to her?

5 MR. YANNETTI: Objection.

6 THE COURT: What, if anything, did he say to her?

7 MR. LALLY: Yes.

8 THE COURT: No, I'm not going let you testify to
9 that. Next question.

10 Q With respect to the defendant's statement the last time
11 she saw Mr. O'Keefe was at the Waterfall, what, if
12 anything, occurred to you in reference to that?

13 A In reference to her saying she last saw him at the
14 Waterfall, I then told my wife --

15 MR. YANNETTI: Objection.

16 A -- what are you talking about?

17 THE COURT: Not what you said, sir, but I believe
18 Mr. Lally asked you what you thought, or what you gathered
19 from that.

20 A I thought she was crazy.

21 Q And why was that?

22 A Because I saw her vehicle, I saw the black SUV arrive
23 to 34 Fairview that morning.

24 Q And you had overheard the conversation from Mr. O'Keefe
25 to your wife the night previous, correct?

1 A That's correct.

2 Q And so what happened next?

3 A I told my wife, what are you talking about, and she
4 was --

5 MR. YANNETTI: Objection.

6 THE COURT: Not what you said to your wife.

7 THE WITNESS: All right, sorry.

8 THE COURT: It's hard. Ask the question, Mr.
9 Lally, so that he can answer.

10 MR. LALLY: Sure.

11 Q So your wife made some phone calls in your presence,
12 correct?

13 A Yes, she did.

14 Q And following those phone conversations, what if any
15 other conversations did she have with the defendant that
16 morning?

17 A There were multiple calls. I don't recall what calls
18 were made what time, but the next call, we were informing
19 the defendant that, wait, we saw your car, we saw you come
20 to 34 Fairview. You guys were there, and I heard the
21 response of, I don't remember. I don't remember going
22 there.

23 Q And what if any other conversation do you recall in
24 those subsequent phone conversations that you overheard
25 from the defendant?

1 A At some moment, as I said, my wife had made a couple of
2 phone calls, and one of the calls with Karen Read she
3 blurted that she broke her taillight, cracked her
4 taillight, something to that effect, while we were -- while
5 Jen and I were still in the bedroom, and she was on the
6 phone.

7 Q As your wife and you were in the bedroom and your wife
8 was on the phone, what, if anything, were the two of you
9 doing?

10 A After my wife had made a few calls, we were completely
11 confused on where the hell John was. The thought process
12 in our head at that moment was we knew that John had
13 mentioned that he was potentially going to be meeting up
14 with another person, so we called that individual, my wife
15 called that individual, to see if by chance again,
16 confused, left at the Waterfall. We saw them at the house.
17 Did John not go with her? What happened? Did he get out
18 of the car? Did he go somewhere else? So we proceeded to
19 call a couple other people that we thought he possibly
20 might have met up with or another individual.

21 Q Now, from those other phone calls that you observed
22 your wife making at any point in time, other than a
23 conversation with the defendant, did you observe her to
24 have any conversation with anybody?

25 A You're asking if my wife did?

1 Q What I'm asking is, not to any content or anything like
2 that, but your wife made phone calls, correct?

3 A That is correct.

4 Q And when she made those phone calls, did you observe
5 her conversing with anybody on the phone?

6 A No, she did not speak to anybody. Nobody answered any
7 of our calls.

8 Q And at some point, did you, yourself, reach out to Mr.
9 O'Keefe?

10 A Yes, I did.

11 Q And how did you do that?

12 A I know I texted him, and I think I called him, as well,
13 pretty much, where the hell are you. I think it was when
14 Karen Read and my wife were left the -- were leaving my
15 house. I think I responded, "Where the hell are you? Now,
16 Karen and Jen are out looking for you."

17 Q And in regard to those text messages, did you receive
18 any response from Mr. O'Keefe?

19 A I did not.

20 Q And with regard to those -- you had with Mr. O'Keefe
21 programmed into your phone; is that correct?

22 A Yes, I did.

23 Q And you would have prior conversations with him via
24 text message and phone using that number that you had
25 programmed into your phone?

1 A Yes.

2 Q So no response to the text. As far as the phone call
3 that you placed Mr. O'Keefe, did he answer, did you speak
4 with him at all?

5 A I did not speak to Mr. O'Keefe.

6 Q Now, at some point do you and your wife proceed
7 downstairs?

8 A My wife proceeded downstairs. I remained in the
9 bedroom.

10 Q And what is the next thing that you remember occurring
11 that morning?

12 A Well, I was getting dressed. I put my jeans on. My
13 wife went downstairs. She was going to make a coffee. My
14 wife and I were proceeding to leave -- we were going to
15 leave our house and make a drive to the house of the
16 gentleman that my wife was calling that we possibly thought
17 John could have met up with, and within that moment, again,
18 I don't know the exact time, I then heard yelling out in my
19 front yard.

20 Q And when you heard the yelling in your front yard,
21 where did you go?

22 A I realized it was Karen Read, and I told my wife to
23 please tell her to shut-up. She's going to wake up the
24 whole neighborhood.

25 Q And where is this -- or when is this in relation to

1 that first phone call when you sort of shoot up out of bed?

2 A At least a half hour, give or take. Again, I don't
3 know the exact time.

4 Q Now, at any point after you hear the yelling out front,
5 you hear the defendant yelling out front, what was she
6 yelling, at that point?

7 A She again repeated, "Jen, Jen." She, for some reason,
8 kept repeating my wife's name. I don't know if she got all
9 the way to my doorway or if my wife walked out, but my wife
10 had said -- I was actually relived because I was, like,
11 again, not thinking what happened to John happened to John.
12 I was thinking he was on somebody's couch. So I was like,
13 good, I'm not going to go look for him thinking that was my
14 wife was going to go -- my wife said she was going to go
15 with Karen to go find John.

16 Q And at any point in time that morning when the
17 defendant arrived at your house, did you actually go
18 outside or look outside?

19 A I did not go outside. I did look out the blinds of my
20 bedroom window which is the closest to the driveway.

21 Q What, if anything, did you see when you looked out the
22 blinds?

23 A I saw Karen's car in my driveway.

24 Q Did you see the defendant, Ms. Read, anywhere outside,
25 as well?

1 A I don't recall physically seeing her. I saw the
2 vehicle. I don't recall seeing her directly thinking any
3 physical contact as far as seeing her.

4 Q Now, what, if any, concerns did you have in reference
5 to your wife going out with Ms. Read at that particular
6 time?

7 A I had mentioned to my wife before she was leaving the
8 house --

9 MR. YANNETTI: Objection.

10 A -- that the --

11 THE COURT: I'll allow this. What were your
12 concerns?

13 THE WITNESS: My concerns were she was going to be
14 driving with Ms. Read in their vehicle -- in Ms. Read's
15 vehicle, and my concerns were that she had a broken
16 taillight. What I thought by a broken taillight, was that
17 her taillight was out, meaning there was no light, and I
18 didn't think it was a bright idea to be driving around with
19 no physical light on the taillight.

20 Q Particularly given the weather; is that fair to say?

21 A Because of the weather, correct.

22 Q And so your wife then leaves with Ms. Read; is that
23 correct?

24 A That is correct.

25 Q Do you know -- did you happen to see, like, who got in

1 where as far as the car? Who was driving when they left?

2 A I did not see that, no.

3 Q Now, was that within the same timeframe that you were
4 describing before about a half hour after you hear the
5 initial call?

6 A Yes, from when -- from Ms. Read arriving at my house
7 was, yes, half hour or so after the initial call, and it
8 wasn't long after before they proceeded to go -- to leave.

9 Q Now, at this time that you're looking out from the
10 blinds and you see the defendant's car and the defendant
11 outside, was it light out, was it dark, out, what are we
12 talking about?

13 A It was dark out.

14 Q And so they leave, and you're home with the four
15 children, correct?

16 A That is correct.

17 Q And when was the next time that you spoke to your wife?

18 A The next time I spoke to my wife was an hour later. I
19 received a phone call from her. I don't know the exact
20 time, but I want to say about an hour, an hour or so.

21 Q And without reference to much of the content of that,
22 all I'm really asking you for is what, if any, indication
23 did she give you as to where she was?

24 A She indicated they found John and -- at Fairview.

25 Q Upon receiving that information, where did you go?

1 A I proceeded to finish getting dressed and drove over to
2 Fairview.

3 Q And when you got to Fairview, what, if anything, did
4 you see when you arrived there?

5 A When I got to Fairview, I had come down through the
6 Chapman Street entrance, and as I proceeded down the hill
7 towards the Albert residence, I noticed all the first
8 responders, fire engines, et cetera, police cars, and I
9 realized I was not going to be able to get to the Albert
10 residence because it was all blocking the street. So I
11 backtracked, turned around, went back up Fairview to the
12 top of to Chapman, took a left and took a left down Spring
13 Lane, which is a parallel street Fairview and came down
14 Spring Lane to Cedarcrest onto Fairview so I could get to
15 the Albert household.

16 Q Now, during your drive from your home over to Fairview
17 and doing all that sort of turning around and coming back
18 around the other way through Cedarcrest, what were the
19 roads like?

20 A It was snowing; careful driving.

21 Q And The snowing that you observed that morning when you
22 drove from your house to Fairview, what was that like in
23 relation to the snowing that you observed when you were
24 driving home from Fairview hours before?

25 A Much, much thicker snow. Much more snow on the ground,

1 much more snow to wipe off my car. And again, I had to
2 drive slow.

3 Q Now, when you come around to sort of the other side as
4 far as the first responders, you mentioned police cruisers
5 and a fire truck; is that right?

6 A Yeah. There might have been an ambulance there, as
7 well, but, yes.

8 Q Do you recall specifically seeing an ambulance?

9 A I do recall seeing an ambulance. I don't know if I saw
10 it when I came down, or if I saw it when I eventually
11 parked the car, but I do recall seeing an ambulance.

12 Q And when you parked the car where did you go?

13 A I proceeded onto Fairview and I parked the car along
14 the side of the road because there was another vehicle in
15 front of me. I believe the other vehicle might have been
16 blocking the driveway but there was another vehicle right
17 on the side of the road, as well.

18 Q Now, in addition to the other vehicles as far as
19 cruisers, fire truck or whatever from the first responders
20 what if any other vehicles or who, if anyone else, did you
21 see outside of the house?

22 A It ended up being Kerry Roberts' vehicle was parked as
23 I was at the driveway, a Ford Explorer, I think it was.

24 Q And again, without any reference to the content of the
25 conversation did you have any conversation with Ms. Roberts

1 at that time?

2 A Yes, I did.

3 Q Did you know Ms. Roberts at that time?

4 A I knew who she was. I didn't really have a
5 relationship with her, but I knew who she was.

6 Q And how did you know who she was?

7 A Friends through the town. She did live in the
8 Ponkapoag neighborhood, though I believe she moved in and
9 we moved out shortly after. I don't know the actual time
10 period.

11 Her kids were a couple years younger. One was one year
12 younger than my child, so I knew who her child was through
13 being a grade beneath my youngest child through soccer.

14 Q And just to be clear, when you talk about the Ponkapoag
15 neighborhood, that's where you used to live on Sutcliffe
16 and where Mr. O'Keefe used to live in the house that was
17 the (C) 's house?

18 A Yes, that's correct.

19 Q So then after the conversation with Ms. Roberts, how
20 long was that conversation?

21 A Well, that was a brief conversation. She informed me
22 that she had to -- she was going to pick up -- well, sorry.
23 She informed me Karen was going -- she was dropping Karen
24 off back at the house. She was going to the hospital, and
25 she was going to pick up John's parents in Braintree. I

1 told her I would come with her to pick up the parents.
2 Like I said, the road conditions were pretty bad, and, you
3 know, just for safety reasons, I thought I would go with
4 her, help her go pick up the parents. She informed me that
5 Jen was in the house. Jen is waiting to be interviewed by
6 the police.

7 Q And so where did you go from there?

8 A I then proceeded to the front door of 34 Fairview.

9 Q And when you got inside who, if anyone, was inside when
10 you got there?

11 A When I got to the front door, it was my wife, Brian
12 Albert, Nicole Albert, and Officer Lank.

13 Q And when you came in can you describe, starting with
14 your wife, Jennifer McCabe, can you describe her demeanor
15 when you first came into the house?

16 A Shocked. Just her face was drawn, just kind of in awe.
17 All three of them were just looking like, you know, with a
18 drawn face of I'm walking in going, what the hell is going
19 on?

20 Q And just to be clear, by all three of them you mean
21 your wife, Brian Albert, Nicole Albert?

22 A Correct.

23 Q And just turning back briefly to the phone conversation
24 that you had from your wife which led you to come over to
25 Fairview in the first place, how would you describe her

1 demeanor on that phone call as well?

2 A Matt, we found John at Fairview. It was a quick
3 conversation. I didn't get any details.

4 Q Now, at some point while you were at the house, did you
5 speak to, you mentioned Officer Lank was there; is that
6 correct?

7 A That's correct.

8 Q Do you recall if there were any other officers in the
9 house at that time or at any later time?

10 A At that moment, it was just Officer Lank at that
11 moment. Other officers came in the house a little later,
12 but at that moment, it was just Officer Lank.

13 Q And at some point while you were at the house, did you
14 have any conversation -- or what, if any, conversation did
15 you have with Officer Lank or any other officer?

16 A Yes. Officer Lank asked me to step outside, and we
17 spoke briefly. He asked me about -- if I knew what
18 happened to John. Obviously, I told him, no, I have no
19 idea. I'm just finding out right now. He asked me when I
20 last saw John. I told him I saw him at the Waterfall. We
21 saw him at the bar. We haven't seen him. I believe again
22 in the heat of the moment, I believe I said we saw a
23 vehicle out front, but we never saw John.

24 Q Now, at the house on Fairview, about how long were you
25 there that morning?

1 A I'm going to say at least four hours.

2 Q From the time that you got there?

3 A From the time I got there, yes.

4 Q And where did you go from there?

5 A When I left Fairview?

6 Q Yes.

7 A I went back to my house -- Jen and I's house.

8 Q Your children were still there; is that correct?

9 A My children were all there, correct.

10 Q And at some point after you arrived home, who, if
11 anyone else as far as police officers or anybody like that,
12 came to your home that day?

13 A Two Mass. State Police officers came to my house.

14 Q And did you speak with those officers?

15 A Yes, I did.

16 Q Troopers from the state police, correct?

17 A Yes, that's correct.

18 Q And as far as the troopers that you spoke to do you
19 recall what their names were?

20 A Yes, Trooper Michael Proctor, and Trooper Yuriy
21 Bukhenik, if I said it right.

22 Q Closer than you think. Now, on that date of January
23 29, 2022, had you met either Trooper Proctor or Trooper
24 Bukhenik before?

25 A I had never met them.

1 Q And where did they speak with you in the house?

2 A Well, they first came in the house and informed me they
3 were going to interview my wife and asked me to leave the
4 room. I went up to my bedroom.

5 Q And at some point, did they interview you, as well?

6 A Yes, they did.

7 Q And where was your wife when they interviewed you?

8 A I think she wasn't in the room with me. I think she
9 went upstairs. As I said, my kids were home. I don't know
10 if she went in the kids' bedrooms to kind of wake them up.

11 Q She wasn't in the room when they interviewed you,
12 correct?

13 A No, she was not.

14 Q And the troopers came over to your house and your
15 brother-in-law, Brian Albert, did he come over at any point
16 in time around this?

17 A Yes, he did.

18 Q And if you know, did he speak with those troopers, as
19 well?

20 A Yes, he did.

21 Q Where were you and your wife when the two troopers were
22 speaking to Mr. Albert?

23 A I was still upstairs in the bedroom.

24 Q And your wife, where was she?

25 A She might have come up to see me, but I think she might

1 have went into the girls' bedroom. I don't recall if she
2 was standing in the same room. I think she might have gone
3 into my daughter's bedroom. Again, my kids were starting
4 to -- I don't know the exact time, twelve o'clock give or
5 take, time to wake up.

6 Q Fair to say, so when the troopers, when they were
7 speaking to Brian Albert, Sr., they were in the downstairs
8 area of the home?

9 A Yes, they were.

10 Q And both you and your wife were upstairs?

11 A Yes, that's my recollection.

12 Q Now, turning your attention to a couple of days later,
13 did you speak with any other troopers from the state
14 police?

15 A I did. I only remember the first name of one of them.
16 It was a man and a woman. I just remember Connor. Connor
17 something. I don't know their names.

18 Q And where did that conversation occur?

19 A I was in my first floor dining room table.

20 Q And do you know if those same two troopers that came on
21 subsequent dates spoke with your wife, as well?

22 A Yes, they did.

23 Q And so the same arrangement as far as where you were
24 and where she was at the time that you spoke with those two
25 troopers?

1 A Yes, that's correct.

2 MR. LALLY: May I have one moment, Your Honor?

3 THE COURT: Sure.

4 Q Just briefly, sir, describing your wife's demeanor you
5 described it has sort of being in shock; is that correct?

6 A Yes, that's correct.

7 Q Have you seen your wife display that kind of demeanor
8 before or have you seen your wife in sort of crisis mode
9 over the course of your relationship and your marriage?

10 A I've seen her in crisis mode, I'd call it crisis mode,
11 as well, in the past.

12 Q And sort of typically, how would you describe how she
13 handles situations like that or what her demeanor is in
14 those types of situations?

15 A She is very calm, very calm.

16 Q And just so it's clear for the jury, so when you're
17 talking about sort of prior incidents in regard to sort of
18 crisis mode, what types of scenarios or what types of
19 incidents are we talking about?

20 MR. YANNETTI: Objection.

21 THE COURT: No, I'll allow it.

22 A Previous death, deaths of my parents, my brother. She
23 is the one that can get in the room, sit, relax, hold their
24 hand, make them feel comfortable. She's much more -- I
25 can't do that. She's much more -- so she's done that with

1 my family, and she's also done that with our neighbor.

2 MR. LALLY: I have nothing further. Thank you,
3 sir.

4 THE COURT: All right, Mr. Yannetti?

5 MR. YANNETTI: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. YANNETTI:

8 Q Good morning, Mr. McCabe.

9 A Good morning.

10 Q I'd like to start by discussing January 22nd, the week
11 prior to January 29th, do you remember that Saturday?

12 A Yes, I do.

13 Q You had been at one of your daughter's hockey games
14 that day?

15 A The Saturday before, we're saying?

16 Q Yes.

17 A Yes, I was.

18 Q And you wound up going to the Hillside in Canton,
19 correct?

20 A That is correct.

21 Q You went with your wife, Jennifer McCabe?

22 A Yes.

23 Q When you got there you saw Karen Read and John O'Keefe
24 there together, correct?

25 A I was there previous to them, but yes, I saw them

1 there, yes. I eventually saw them.

2 Q I should have phrased the question in that ultimately
3 you ran into John and Karen together, correct?

4 A Yes, I did.

5 Q And when you came in contact with them you and your
6 wife and Brian Albert and his wife, Nicole, who is your
7 sister-in-law, hung out with Karen Read and John O'Keefe,
8 correct?

9 A Yes, there was a big group of people hanging out
10 together, correct.

11 Q There were other people in addition to the ones that
12 I've just named?

13 A Yes, there were.

14 Q So you were with John and Karen for maybe around an
15 hour or so that night of January 22?

16 A I'd say, I don't know exactly what time they arrived
17 but yes, I'd say they were there for at least an hour.

18 Q During that hour span of time they appeared to be
19 enjoying each other's company?

20 A Yes.

21 Q The two of them had arrived together, correct?

22 A They walked in together, yes.

23 Q And there were no problems that night that you could
24 see between John and Karen, correct?

25 A Yes, I did not see any problems.

1 Q Now, moving onto the Waterfall on January 29th, I am
2 not going to go through with you who arrived when and who
3 left when and where people sat at which table, we're going
4 to skip all that, and I'd like to streamline the
5 questioning if I can, and I just want to talk to you about
6 two or three areas.

7 You would agree that at the Waterfall the mood among
8 the people who were there was festive, correct?

9 A Yes, that's correct.

10 Q Everybody appeared to be happy and enjoying themselves,
11 correct?

12 A Everybody was enjoying each other's company, correct.

13 Q Specifically with regard to John O'Keefe and Karen
14 Read, they appeared to be quite happy that (c) had been
15 accepted into Bishop Feehan, correct?

16 A I recall talking to John about it. He was happy that
17 (c) got into Bishop Feehan, I do not recall talking to
18 her about Bishop Feehan but definitely John was happy about
19 (c), yes.

20 Q You have previously testified that they were both
21 excited about that, were you not?

22 A If I did, I did. I just know that John mentioned that
23 he was out because was excited about (c) being at Bishop
24 Feehan. If I grouped them both in then they were happy. I
25 don't remember what I said when I said it. Put it this

1 way, I didn't see her that she wasn't happy about it. Does
2 that make sense?

3 Q Yeah, well, I'm just going by your words, sir. As far
4 as you could see, they were both excited about her
5 acceptance, correct?

6 A Yes.

7 Q And they had just found out the previous day or so,
8 correct?

9 A I don't recall what day they found out, but I know that
10 John mentioned he went out for some beers. He was excited
11 because (C) got into Bishop Feehan, and he mentioned
12 that he was out with another one of his friends whose
13 daughter also got into Bishop Feehan.

14 Q Right. And it appeared to be new news, correct?

15 A Oh, yes. It was news they were waiting on, yes.

16 Q Right, you hadn't heard it before. This was the first
17 that you heard it, correct?

18 A I don't know if I heard it, if somebody -- if he had
19 already leaked it the day before or that day, but the first
20 I heard it from John.

21 Q All right. But it was clear to you that it was really
22 important to John O'Keefe that (C) get into Bishop
23 Feehan and go there, correct?

24 A They applied. He was excited for her to go there.

25 Q It was clear that he believed it was an achievement for

1 her, correct?

2 A Yes.

3 Q And you could glean also that John O'Keefe felt like it
4 was an achievement for him, as well, correct?

5 MR. LALLY: Objection, Your Honor.

6 THE COURT: Could you glean that from him?

7 A He was happy that she got in. I couldn't -- I don't
8 know what he was -- if he felt it was his achievement. He
9 was happy for (c) .

10 Q Of course. And he was doing right by his sister's
11 daughter, correct?

12 MR. LALLY: Objection.

13 A I don't know what that means. You can go to any school
14 and do right.

15 Q In any case, everything seemed good that night?

16 A Everything was good.

17 Q There were no arguments?

18 A There was no arguments that I saw.

19 Q John was drinking beer?

20 A To my recollection, yes.

21 Q And you had previously testified that you saw Karen was
22 drinking some type of clear liquid that you assumed was
23 some type of vodka drink, correct?

24 A That is correct.

25 Q But you didn't think that they were drinking much,

1 correct?

2 A At the Waterfall?

3 Q Yes.

4 A No. They were only there for an hour, so.

5 Q Right. And they got there around 11:00, correct?

6 A Give or ten, yep, 11:00-ish.

7 Q And that bar is pretty strict about last call, correct?

8 A That is correct.

9 Q And you spoke with both of them during the course of
10 the night, correct?

11 A Yes.

12 Q Neither John nor Karen was intoxicated in your view,
13 correct?

14 MR. LALLY: Objection.

15 THE COURT: Can you answer that?

16 A They were drinking. I don't know what the guideline of
17 intoxication is, but they were drinking.

18 Q Do you recall testifying before the grand jury
19 regarding this matter on April 26th of 2022?

20 A If you have that, then I must have. I don't recall my
21 questions, that question specific, but yes.

22 Q I didn't ask about the questions. I just asked if you
23 recall testifying before the grand jury on that date.

24 A I don't remember the date. I recall testifying before
25 the grand jury.

1 Q Okay. If I suggested to you that it was April 26th of
2 2022, would you quarrel with that?

3 A Did you say would I quarrel?

4 Q Yeah.

5 A No, it was definitely around that time.

6 Q Okay. And at that grand jury presentation, Mr. Lally
7 was there, correct?

8 A Yes.

9 Q None of the defense team was there, correct?

10 A No.

11 Q Karen Read was not there, correct?

12 A No.

13 Q And there was no judge there, correct?

14 A No.

15 Q And April 26, was approximately three months after
16 January 29th of 2022?

17 A Yes.

18 Q Is it fair to say that your memory about whether or not
19 John and/or Karen was intoxicated, would have been better
20 on April 26th of 2022 than it would be today?

21 MR. LALLY: May we approach, Your Honor?

22 THE COURT: All right. I'll see you at sidebar.
23 Jurors feel free to stand and stretch.

24 (Sidebar commences:

25 MR. LALLY: Your Honor, my objection is not to whether

1 or not he said this before or didn't say this before. My
2 objection is to the terminology, and I'm not being sure I
3 have as much as much of an issue with intoxicated but there
4 have been numerous other witnesses who have been asked
5 whether or not they felt that Ms. Read specifically was
6 under the influence. I do have a severe issue with that as
7 I think that is a legal standard. So if counsel wants to
8 ask did she seem drunk or she was, you know, as he's done
9 as far as slurring or words, or, you know, having
10 difficulty standing, things like that, I think those are
11 (indiscernible) but I think anything approaching what the
12 jury is ultimately supposed to conclude is --

13 THE COURT: What's the question that was asked?

14 MR. YANNETTI: I asked --

15 THE COURT: No, no, not you. The grand jury.

16 MR. YANNETTI: Oh, I'm sorry.

17 THE COURT: If you used intoxicated, he can certainly
18 use intoxicated in the question.

19 MR. YANNETTI: Question: Did either of them on this
20 particular evening seem sort of openly intoxicated to you?
21 Answer: No.

22 THE COURT: Okay. Yeah, this overly intoxicated term
23 has been baffling me, frankly, throughout, but you can use
24 what he said in the transcript. Okay.

25 MR. LALLY: Understood.

1 end of sidebar.)

2 MR. YANNETTI: May I proceed?

3 THE COURT: Yes.

4 Q I had just asked you if your memory of your
5 observations of Karen Read and John O'Keefe from January
6 29, would have been better on April 26th of 2022, than it
7 would be today?

8 A Yes, I think that's fair to say.

9 Q And that's because your memory doesn't get better over
10 time, correct?

11 A I don't know. I would say it's fair to say, yes, my
12 memory would be better that day.

13 Q And on that day you were asked by Mr. Lally, quote, did
14 either of them -- strike that. I'm going to back to the
15 previous sentence just to put it in context.

16 A Yes.

17 Q The previous sentence was from Mr. Lally: "Obviously
18 you've had social occasions with Mr. O'Keefe and Ms. Read
19 before, correct?"

20 And your answer was, "Oh, yes." Right?

21 MR. LALLY: Objection, Your Honor.

22 THE COURT: I'll let him have it.

23 A I answered yes, I had previous. I don't know if I
24 said, "Oh, yes" but my answer was, yes, of course I had a
25 previous relationship with them.

1 Q Okay, I'm sorry, I cut you off, sir.

2 A I'm saying of course I had a previous relationship with
3 them.

4 Q And the question that I wanted to direct you to just to
5 put it in context was did either of them, speaking about
6 John and Karen, on this particular evening seem sort of
7 overly intoxicated to you; do you recall that question?

8 A I don't recall the specific question, but that's the
9 question.

10 Q And your answer was no to that?

11 A Yes, if that's my answer, then it was no.

12 Q In terms of whether you can confirm that that was the
13 question and answer if I should you the transcript would
14 that refresh your memory?

15 A Yes, of course it would.

16 MR. YANNETTI: This is 2103, lines 13 to 15 for
17 counsel and if I can ask permission, Your Honor.

18 Q Having reviewed that transcript did I get the question
19 and answer correct?

20 A Yes, you did.

21 Q Just a couple more things about the Waterfall. I
22 wanted to ask you about Brian Albert and Brian Higgins,
23 sir.

24 A Yes.

25 Q They were both there that night while you were there,

1 correct?

2 A Yes, they both were there.

3 Q And they are both pretty big guys, correct?

4 MR. LALLY: Objection.

5 THE COURT: Can you answer that?

6 A Yes, they're good sized guys.

7 Q Did you see Brian Albert and Brian Higgins practicing
8 fighting at the Waterfall?

9 A Practicing fighting?

10 Q Right, did you see them kind of square off in a
11 fighting stance with each other?

12 A I recall them grabbing each other. I don't recall them
13 squaring up like they were fighting each other, no. They
14 were playing a little grab ass with each other. I did see
15 them grab each other. I didn't see a physical, hey, let's
16 go, we'll duke it out. I do not recall that.

17 Q So are you saying, you're taking you literally, that
18 they grabbed each other's asses, is that it?

19 A No, I'm saying grab asses, it's a figure of speech.

20 Q Okay, but they didn't grab each other, they were in a
21 fighting stance, weren't they? Didn't they crouch down low
22 towards each other?

23 A I'm telling you, I don't recall seeing them crouching
24 in a fighting stance. I recall them, I recall someone
25 grabbing somebody. I don't remember who grabbed who. I

1 just recall like a bear hug or something, I thought I
2 recall them doing a bear hug.

3 Q So you recall them, one of them getting behind the
4 other one and kind of like restraining them or grabbing
5 them?

6 A I think there was a bear hug, yeah. That's what's in
7 my memory.

8 Q And you would agree with me that after closing time
9 Brian Albert and Brian Higgins were two of the people who
10 went back to 34 Fairview Road, the Albert home, correct?

11 A Yes, that's correct.

12 Q Before everyone left, before you left, it was announced
13 around the table that everyone was welcomed back at Brian
14 Albert and Nicole Albert's house, correct?

15 A Yes.

16 Q Karen Read and John O'Keefe were both there when that
17 invitation was announced, correct?

18 A Yes.

19 Q You would agree that it was expected that Karen Read
20 and John O'Keefe would go to the Albert home that night,
21 correct?

22 A If they wanted to come they were welcome, yes.

23 Q And that plan would have been for them to go inside the
24 Albert home, correct?

25 A Yes.

1 Q Do you recall what time you left the Waterfall?

2 A I left the Waterfall after midnight, give or take
3 12:10-12:15-ish. I don't know the exact specific time, a
4 little before 12:15 but definitely 12:10-ish, 12:15-ish, in
5 there.

6 Q And you were one of the last ones to leave the
7 Waterfall?

8 A Yes, as I mentioned Nicole Nesis and I walked out
9 together from the Waterfall.

10 Q Your wife, Jennifer McCabe, had walked out of the bar
11 physically before you did, correct?

12 A Yes, that's correct.

13 Q And you actually met her in the parking lot?

14 A She was already going to meet Nicole in the parking
15 lot, correct.

16 Q And you got into the car to drive to the Albert's home,
17 correct?

18 A Yes, that's correct.

19 Q So I'm going to ask you about the ride back to the
20 Albert's home in a bit but right now I want to skip to when
21 you got there, okay?

22 A Okay.

23 Q When you first got there your wife parked your vehicle
24 in the driveway, correct?

25 A Yes.

1 Q Which side of the driveway did she park your vehicle
2 in?

3 A As I mentioned yesterday I don't recall if it was
4 immediately on the left, meaning the left towards the lawn
5 or if she was in the next spot one over. I don't remember
6 exactly if it was exactly, or one spot over.

7 Q How many cars were in the driveway at that point?

8 A At least two. I don't recall if there was more than
9 two.

10 Q So if there were at least two those two would have been
11 parked abutting the garage area? In other words, let me
12 rephrase. So there are two lanes in that driveway,
13 correct?

14 A My recollection is two lanes but there is more space id
15 you, I know we go over, we've gone over, there's more space
16 to kind of park three cars.

17 Q To the right?

18 A To the right, correct. But we weren't to the right.
19 We were either left or middle.

20 Q You were behind one vehicle, whichever lane you were in
21 or were you pulled right up to one of the garage entrances?

22 A I don't recall if we pulled all the way in or not. I
23 don't remember.

24 Q So there were at least two vehicles in the driveway
25 before you got there, correct?

1 A In the driveway?

2 Q Yes.

3 A Yes, there were cars in the driveway.

4 Q And when you parked in the driveway, fair to say that
5 there was no black SUV at the Albert's home?

6 A Are you referencing Karen's SUV? I don't know what
7 color the Alberts cars were.

8 Q Oh, okay.

9 A Are you referencing their SUV?

10 Q Put it this way, yes, I'm referencing Karen's SUV.

11 A That was not at the home.

12 Q And that was not in the driveway, correct?

13 A Karen's SUV was not in the driveway.

14 Q Right, and it was not adjacent to the property or not
15 the street anywhere that you could see?

16 A Correct, it was not there.

17 Q But you say that there was a Jeep in the street at that
18 time, correct?

19 A There was a Jeep parked in front of, at the end of the
20 driveway in front of the mailbox.

21 Q And that Jeep belonged to Brian Higgins?

22 A I found out it belonged to Brian Higgins. I didn't
23 know it was his Jeep when I arrived.

24 Q And it had a plow on the front of it?

25 A Yes, it did.

1 Q It was parked adjacent to the Albert's property on
2 Fairview facing up the hill towards Chapman Street,
3 correct?

4 A Yes.

5 Q And at the time that you arrived that was the only
6 vehicle that was parked on Fairview Street adjacent to the
7 Albert property, correct?

8 A Yes.

9 Q And your testimony is that that Jeep remained parked in
10 front of the Albert house just to the left of the driveway
11 as you face the house, until Brian Higgins finally left and
12 drove it away at the end of the night, correct?

13 A That's my recollection, was his Jeep was out in front
14 of the mailbox.

15 MR. YANNETTI: With the Court's permission could be
16 display Exhibit 66?

17 THE COURT: Okay.

18

19 (Exhibit No. 66 was published to the jury.)

20

21 Q So Mr. McCabe, I'm highlighting with a spotlight the
22 front of the Albert's home. When I get to the point where
23 the Jeep was parked would you stop me and you can adjust it
24 right or left if I go too far.

25 MR. LALLY: Objection, Your Honor.

1 THE COURT: Can we have him use the laser pointer
2 first and then?

3 Q Sure, I hope you're better than I am.

4 A No.

5 MR. YANNETTI: May I approach?

6 A I was hoping I didn't have to.

7 Q Oh, you have a laser pointer?

8 A I don't have one.

9 Q That's fine. You can -- yeah.

10 A The Jeep was right there, from the edge of
11 the driveway right there. I believe it
12 was a two-door Jeep.

13 Q Okay, and it looks like part of the Jeep would have
14 been blocking the driveway?

15 A No, no, where the mailbox is, the Jeep was right there.

16 Q Okay.

17 A It was not blocking the driveway.

18 MR. YANNETTI: All right, if I can have a moment.

19 THE COURT: Sure.

20 Q The mailbox, the spotlight is there, would that have
21 been where the back of the Jeep was?

22 A Yeah, the back would have been in the vicinity, the
23 edge of the driveway and the mailbox.

24 Q So it wasn't blocking the driveway at all when you saw
25 it?

1 A No.

2 Q It's facing to the left as you look at Exhibit 66,
3 correct?

4 A Facing, heading to the left of the house, correct.

5 MR. YANNETTI: If we can have the lights back on.

6 Q And as you testified, that Jeep was there the whole
7 night, Brian Higgins didn't go out to move it at any point,
8 correct?

9 A I never saw Brian Higgins go outside and move his Jeep.

10 Q About five minutes after you got to the Albert's home
11 that night you saw a black SUV parked outside the home,
12 correct?

13 A Yes, again, I don't know the exact minutes but give or
14 take, four or five minutes.

15 Q And when you saw that black SUV parked outside the
16 Albert home, Higgins' Jeep was still there, correct?

17 A Yes, to my recollection the Jeep was still outside in
18 front of the mailbox.

19 Q The black SUV was parked in front of Higgins' Jeep with
20 the plow on the front, correct?

21 A That's correct.

22 Q How far or close to that Jeep was the black SUV?

23 A I don't recall the exact distance. Again, when I
24 looked outside my focus was on the black SUV, looked
25 outside, would have been in front of the front door.

1 Q With regard to the distance between the Jeep and the
2 black SUV was it greater or smaller than the distance
3 between you and me right now?

4 A It would be smaller. If you're the end of the Jeep and
5 I'm the end of --

6 Q Let's say I'm the rear-end of the black SUV and you're
7 the front end of the Jeep?

8 A I'd say you'd be a little closer to me.

9 MR. YANNETTI: With the Court's permission may I
10 walk closer to the witness so he can give an estimate?

11 THE COURT: Sure.

12 Q And you can stop me, sir.

13 A Yeah. I don't know. Again, when I looked outside I
14 was focused on the SUV. I wasn't focused on the Jeep or
15 the truck. I don't know the exact distance. You can walk
16 three more feet or three feet that way, but it was out in
17 front of the house. That's all I can tell you.

18 Q Well, you will agree with me that you've given
19 conflicting information about where the black SUV was when
20 you first saw it?

21 A If you tell me I gave conflicting information you can
22 show it to me. I don't recall. I've always said the SUV
23 was in front of the house.

24 Q Right, and when you said in front of the house you
25 meant that as you look out the front door of the Albert

1 residence which on Exhibit 66 would have been the door to
2 the left, that's the classic front door?

3 A The classic front door looking at the house on the main
4 part of the Colonial.

5 Q Looking straight out from there that's where the black
6 SUV was positioned, correct?

7 A In that vicinity, correct.

8 Q Right, it would have been sort of directly in front of
9 you as you look out that front door, correct?

10 A Like I said, in the vicinity of looking out the front
11 door was the black SUV. If it was three feet this way or
12 three feet that way, I don't know.
13 It was just out in front of the house.

14 Q That was where it was when you first spotted it
15 according to your testimony today, correct?

16 A Yes.

17 Q But you spoke to Michael Proctor during the afternoon
18 of January 29th, did you not?

19 A Yes, I did.

20 Q That was the very day that these events occurred,
21 correct?

22 A Yes, it was.

23 Q You would agree with me that your memory of where that
24 black SUV was when you first spotted it on January 29th,
25 would it have been better on that very day than it would be

1 today, correct?

2 A Possibly, yes.

3 Q It's almost two-and-a-half-years later?

4 A Two-and-a-half-years that it lived in my memory, yes.

5 Q But your memory does not get better over time, correct?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 Q On January 29th of 2022 when you spoke to Michael
9 Proctor you told him that you saw a black SUV parked to the
10 right of the residence as you at the property from the
11 street, did you not?

12 A I did not. Can you elaborate what you mean by the
13 right of the residence?

14 Q Well, I will just repeat the question. Did you tell
15 Michael Proctor on January 29th of 2022 that you observed a
16 big, dark SUV parked to the right of the house?

17 A What right? Looking at the house to the right, or
18 looking at the house to the left? When you say right I
19 don't know what you mean by right.

20 Q Is your memory exhausted as to what you told Michael
21 Proctor?

22 A No, not at all.

23 Q If your memory is not exhausted, would you agree with
24 me that while you were at 34 Fairview you told Michael
25 Proctor that you observed a big, dark SUV parked to the

1 right of the house?

2 A That could have been the second time I informed him of
3 seeing the SUV.

4 Q Okay, if I suggested to you that that was the first
5 time, according to what you told Michael Proctor would you
6 dispute that?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 Q Is your memory exhausted as to whether or not it was
10 the second time according to what you told Michael Proctor?

11 A My memory is not exhausted.

12 Q Okay, so if your memory is not exhausted, do you deny
13 telling Michael Proctor that you observed a big, dark SUV
14 parked to the right of the house?

15 MR. LALLY: Objection.

16 THE COURT: Can you answer that?

17 A I don't know if I can answer it. I believe it's the
18 second question. I told him I saw an SUV parked in front
19 the house, then I saw an SUV move further up the right
20 which looking out of the house would be to the right of the
21 house so that would be when I saw the SUV to the right of
22 the house, would be the second time I saw the SUV. I've
23 always stated the SUV was in front of the house if looking
24 out the front door.

25 Q So you deny telling Michael Proctor that when you first

1 saw the SUV, by the way, is this funny? I'm sorry --

2 A This is not funny, sir. Not at all. It's just been
3 two years of misery.

4 Q You're smiling now, that's why I asked.

5 A You keep repeating the same question.

6 Q Well, I'm trying to get answer that you won't give me,
7 sir. When you talked to Michael Proctor on January 29th,
8 2022, when you first observed the big, dark SUV you said to
9 him it was parked to the right of the house?

10 MR. LALLY: Objection.

11 THE COURT: This is the last time for that
12 question. Is that right?

13 A That is not right. The SUV the first time was in front
14 of the house coming out the front door. The second time
15 was, it was to the right of the house.

16 THE COURT: You have to move on.

17 MR. YANNETTI: Got you. Okay. All right.

18 Q So, you did not say that, but you did say that you were
19 making those observations from the front door, correct?

20 A As I stated yesterday I recall --

21 Q That's a yes or no question, I'm sorry.

22 MR. LALLY: Objection.

23 THE COURT: Can you answer it, yes or no?

24 A I can't. I said yesterday I looked out the window and
25 I looked out the front door. I don't remember which order.

1 Q Well, you told Michael Proctor that the first time you
2 looked out, it was out the front door, did you not?

3 A I don't recall what I told Michael Proctor.

4 MR. YANNETTI: You don't recall. May I approach,
5 Your Honor?

6 THE COURT: Yes.

7 MR. YANNETTI: Page 2 of Proctor's report, Counsel.

8 THE COURT: Next time, show it to --

9 MR. YANNETTI: I'm sorry.

10 Q If you can read the first few sentences of that second
11 paragraph?

12 A The second paragraph?

13 MR. YANNETTI: May I approach?

14 THE COURT: Yes.

15 Q Here it says you don't remember what you told Michael
16 Proctor, did that report refresh your memory?

17 A I'm not saying I don't remember what I told Michael
18 Proctor.

19 Q Well, hold on a second.

20 A I'm stating what I remember.

21 Q Hold on a second, sir. You just told this jury that
22 you don't remember what you told Michael Proctor. Those
23 were your words?

24 A Yes, at the point I'm reading. I don't remember the
25 exact wording.

1 Q Okay.

2 A But I know what I told Michael Proctor.

3 Q All right, and you told Michael Proctor that you
4 observed a big, dark SUV parked to the right of the house,
5 did you not?

6 A At some point in the conversation, yes, I told Michael
7 Proctor that a big, dark SUV moved to the right of the
8 house.

9 Q Moved to the right of the house, is what you just said?

10 A All right, let me rephrase. At some point, there was a
11 big, dark SUV parked in front of the right of the house. I
12 physically didn't see it move, so I need to rephrase, I
13 can't say move.

14 Q What I'm concentrating on now, sir, not what your
15 memory is today or what you testified to the jury today,
16 I'm concentrating on what you told Michael Proctor that
17 very day on January 29th of 2022, okay, and you initially
18 told him that it was parked to the right of the house, the
19 big, dark SUV and that you made those observations from the
20 front door and then you stated you looked out the front
21 window --

22 MR. LALLY: Objection, Your Honor.

23 Q -- and observed the same big, dark SUV had moved to
24 the other side of the property, correct?

25 THE COURT: The objection is sustained. You have

1 to break that down. And I thought we have moved on from
2 this, Mr. Yannetti.

3 MR. YANNETTI: No, we haven't gotten to the second part
4 of the --

5 THE COURT: So bring the document and I'll see you at
6 sidebar.

7 (Sidebar commences:

8 THE COURT: So he's answered your question. It's not
9 the answer that you want, so you have to give the
10 (indiscernible) at this point, and asking compound
11 questions doesn't get you any closer.

12 MR. YANNETTI: I understand.

13 THE COURT: So let me just read the portion. All right.
14 He's testified he doesn't know (indiscernible). This isn't
15 clear enough to me through this witness that this was the
16 initial observation.

17 MR. YANNETTI: Your Honor, just for the record --

18 THE COURT: We can mark it.

19 MR. YANNETTI: We can mark that one.

20 THE COURT: We're not marking that. Can you mark that,
21 please?

22 THE COURT REPORTER: Double I for identification, Your
23 Honor.

24 (Whereupon Exhibit II, Excerpt from Proctor Report, was
25 marked for identification.)

1 THE COURT: Thank you.

2 MR. YANNETTI: So it's double I for identification says
3 that he saw it on the right, and then he looked out the
4 front window and saw that it had moved to the other side of
5 the property, so it's clear that he saw it first. And
6 second, according to what he told Proctor, he won't admit
7 to that now, but I don't have that yet before the jury. I
8 haven't been able to ask him about the (indiscernible) when
9 it moved.

10 THE COURT: You did and he just answered it. You asked
11 it in a compound way. What do you say, Mr. Lally?

12 MR. LALLY: Your Honor, what I would say is showing the
13 witness what the trooper wrote in his report it's not a
14 transcript of what this witness said. So if this witness
15 can agree or disagree with what Trooper Proctor wrote in
16 his report, but I don't think that --

17 MR. YANNETTI: I can ask him, do you disagree with what
18 is written in this report.

19 THE COURT: He already said he disagree with that.

20 MR. YANNETTI: I don't believe he answered the question
21 about moving to the other side of the property because it
22 was a compound question.

23 THE COURT: I'm going to give you a little warning --
24 one little warning fact by question and question, and
25 you're going to live with the answer. If you can't get it

1 through him, you can get it through (indiscernible).

2 MR. YANNETTI: Understand. Understand.

3 THE COURT: I'll give this back.

4 end of sidebar.)

5 THE COURT: One last question on this, Mr. Yannetti.

6 Q Yes. With regard to Trooper Proctor's report that you
7 have in front of you, right, it's II for identification?

8 A Yes, I'm reading it.

9 Q You will agree with me that he reported your
10 conversation as saying that the vehicle was first to the
11 right and then moved to the other side of the property,
12 correct?

13 MR. LALLY: Objection.

14 THE COURT: Sustained.

15 Q You testified before the grand jury regrading this
16 issue on April 26th, of 2022, did you not?

17 A Yes, I did.

18 Q And you talked about the vehicle moving from point A to
19 point B, correct?

20 A Yes.

21 Q And you estimated that it was 15 to 20 feet or so that
22 the SUV moved along the property line, correct?

23 A Yes. Again, I don't know the exact distance but
24 estimates.

25 Q At that point in time, you were asked to clarify what

1 you had meant when you said that the vehicle was first on
2 the right side of the property; do you recall that
3 testimony?

4 A I do not.

5 Q Do you recall that Mr. Lally asked you, you know, to
6 the right would have been towards the driveway side of the
7 property, and that you answered, "that's correct?"

8 A I don't remember the conversation, and again to the
9 right looking at the house or to the right looking out of
10 the house?

11 Q That's what I'm talking about. To the right looking at
12 the house would be towards the driveway part, correct?

13 A To the right looking at the house would be towards the
14 driveway.

15 Q And that's your testimony where the vehicle started
16 out, correct, and moved towards the flagpole the second
17 time?

18 A The vehicle started in front of the house and moved
19 towards the flagpole, correct. So looking out of the house
20 it moved towards the right.

21 Q Now, excuse me, all right, you told Michael Proctor
22 that initially it was parked closer to the driveway or the
23 mailbox when you first saw it, correct?

24 MR. LALLY: Objection.

25 THE COURT: Objection sustained. We're moving off

1 this, Mr. Yannetti.

2 MR. YANNETTI: Sure.

3 Q Wherever it was when you first saw it, where was the
4 Jeep in relation to that black SUV when you first laid eyes
5 on the black SUV?

6 A Again, I was focused on the black SUV. My recollection
7 is the Jeep was still in the same spot which you had
8 pointed out earlier on the exhibit.

9 Q In terms of where it was facing, I'm sorry, the Jeep
10 was behind the black SUV?

11 A The Jeep would have been behind the black SUV, correct.

12 Q Wherever it was along that property line you would
13 agree with me that before the black SUV arrived outside the
14 Albert home you didn't notice any tire tracks in the snow
15 on the street in front of the house, correct?

16 A Before, yes; that's correct.

17 Q Before the black SUV arrived?

18 A Correct.

19 Q At all times that you saw the black SUV, first or
20 second, it was always facing towards Chapman Street,
21 correct?

22 A Yes, that's correct.

23 Q And it was always facing in the same direction that you
24 say that Higgins' Jeep was facing, correct?

25 A Yes.

1 Q And that would mean that the passenger's side of the
2 black SUV was the closest side to the Albert home, correct?

3 A Yes.

4 Q And it was the closest side to you when you were first
5 looking at it, correct?

6 A Yes.

7 Q Now, your testimony today is you don't recall if the
8 first time you looked at that black SUV it was through the
9 front door or if it was through a front window, correct?

10 A Correct, I don't recall which one I looked out. I knew
11 I looked out both of them at some point. I just don't
12 recall which one was first.

13 Q Whichever one it was when you first laid eyes on that
14 black SUV, you did not see John O'Keefe in the passenger's
15 seat, correct?

16 A That is correct.

17 Q How long a span of time was it between the first time
18 you looked out and saw the black SUV and the second time?

19 A Again, I don't have the exact time. I'm going to guess
20 three, four, five minutes at most.

21 Q And what you did in between those three, four, five
22 minutes was you went back to the table or near the table in
23 the kitchen/dining room area where everybody was
24 congregated?

25 A That's correct.

1 Q And you went back there to talk to people and
2 socialize, correct?

3 A Yes, that's correct.

4 Q Then you came back to the front of the house and either
5 went to the front window or the front door and that's when
6 you noticed that the black SUV had moved to the other side
7 of the property, correct?

8 A Yeah, at that moment it had moved to the right of the
9 property.

10 Q It had driven forward, correct?

11 A I did not see it drive but it did move, yes.

12 Q And it moved forward?

13 A It had to get there somehow, yes.

14 Q It was now closer to the flagpole than it was the first
15 time, correct?

16 A That is correct.

17 Q And the flagpole as you look at the property, not when
18 you were looking out but as you look at the property from
19 the street that would have been to the left, correct?

20 A Yes.

21 Q And again, it was still facing towards Chapman Street?

22 A Yes.

23 Q In terms of how many times you saw the black SUV having
24 moved outside the house you would agree with me that you
25 had contradicted yourself about how many times that it

1 moved, correct?

2 A No.

3 Q Yesterday and today you testified that it was in three
4 different spots and then it was gone, correct?

5 A Yes, three times I looked out and saw the SUV.

6 Q Right, and again, in May of 2024, yesterday and today,
7 all three times it moved it was moving further or farther
8 up Fairview towards Chapman Street, correct?

9 A Yes.

10 Q And in fact, you've testified now in May of 2024 that
11 the third time that you saw it, the black SUV was even past
12 the fire hydrant just about to the neighbor's property,
13 correct?

14 A Yes.

15 Q But again, your memory of where it was the last time
16 that you saw it or how many times you saw it, I should say,
17 would have been better on January 29th than today, correct?

18 A Again, assumption, yes. I guess it should be.

19 Q And in fact, when you were talking to Michael Proctor
20 you had just observed the black SUV just hours before
21 speaking to him, correct?

22 A Yes.

23 Q Not tow-and-a-half-years before, right? Is that a yes?

24 A Oh, yes.

25 Q When you spoke to Michael Proctor you told him that you

1 only saw the black SUV in two different spots, correct?

2 A That's what it says on this paper. My recollection has
3 always been I saw the black SUV in three different spots.

4 Q You just called it a paper, it's a police report,
5 correct?

6 MR. LALLY: Objection.

7 THE COURT: That's sustained, Mr. Yannetti.

8 Q Now, since you talked to Michael Proctor on January 29,
9 of 2022, it's fair to say you've had multiple conversations
10 about this case with your family, correct?

11 A Of course I've talked about this case.

12 Q That includes in-person conversations, correct?

13 A With my family?

14 Q Yes.

15 A Yes.

16 Q As well as phone calls and texts?

17 A Yes.

18 Q You've also, since you've talked to Michael Proctor
19 have had multiple conversations about this case with your
20 in-laws, correct?

21 A Yes.

22 Q That also includes in-person conversations and well as
23 phone calls and texts, correct?

24 A That is correct.

25 Q And since you gave that statement to Michael Proctor

1 you've have multiple conversations specifically with Brian
2 Albert, correct?

3 A Yes, I've talked with Brian Albert.

4 Q That would be in person, phone calls and texts?

5 A That is correct.

6 Q Would you agree with me that in terms of the changes in
7 your version of events from what you've testified during
8 this trial to what is in Michael Proctor's report, you put
9 the SUV farther down Fairview towards Chapman street now,
10 correct?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 Q Your testimony during this trial puts the SUV past the
14 fire hydrant almost towards the neighbor's house, correct?

15 A That is correct.

16 Q However many times you saw that black SUV you'd agree
17 with me you never observed any damage to the rear of that
18 vehicle, correct?

19 A Correct.

20 Q You never saw any damage to the rear right taillight,
21 correct?

22 A Correct.

23 Q You'll also agree with me that every time you saw that
24 black SUV the vehicle had its headlights on, correct?

25 A I was looking at it as we talked about it moving up the

1 property out near the back, the back of the SUV. The
2 assumption is the headlights were on but I wasn't
3 looking at the headlights.

4 Q Well, that would have meant that the area in front of
5 the vehicle was lit up, correct?

6 A Yeah, but like I said it was further up the road.

7 Q Sometime after that black SUV first arrived you noticed
8 that there were tire tracks, I should say, in a V-shape on
9 the street in front of the Albert home, correct?

10 A That's correct.

11 Q And those tire tracks were from the curb in front of 34
12 Fairview towards the neighbor's property across the street
13 and then back towards the curb, correct?

14 A Yes, it came out, came up towards the cross street and
15 came back in.

16 Q And the pattern of those tire tracks that you observed
17 were consistent with the vehicle making a three-point-turn,
18 correct?

19 MR. LALLY: Objection.

20 THE COURT: Can you answer that?

21 A I don't know if the vehicle made a three-point-turn.
22 It could be consistent with it because it was a wavy
23 pattern.

24 Q Okay.

25 A I've never looked at tire tracks after I've done a

1 three-point-turn to determine what the action looked like,
2 but in and back out.

3 Q There was nothing about those tire tracks that ruled
4 out a three-point-turn to you, correct?

5 A No.

6 Q All right, you didn't see those tire tracks again until
7 the black SUV arrived at the home, correct?

8 A You mean, yes, I didn't see them previous to the black
9 SUV.

10 Q And Higgins' Jeep was already there before the black
11 SUV arrived, correct?

12 A Yes.

13 Q So Higgins' Jeep was already parked and stationary when
14 there were no tire tracks in that area, correct?

15 A I didn't notice, what, I parked my car. We parked in
16 the driveway and walked in the house. I wasn't looking at
17 the tire tracks. Higgins' Jeep was already parked.

18 Q Right; right, you didn't see tire tracks at that point,
19 is my point?

20 A Yes, I didn't see it.

21 Q At the point that you saw those tire tracks there were
22 no other vehicles in the area along the Albert family
23 property line on Fairview other than Higgin's Jeep and the
24 black SUV, correct?

25 A That's my recollection, yes.

1 Q So now we're going to go back to where I had left off
2 with regard to meeting your wife, Jennifer McCabe, in the
3 car after leaving the Waterfall, do you recall that we sort
4 of left off with you getting in the car and starting to
5 drive home?

6 A Yes.

7 Q Once you got inside the car your wife ultimately called
8 John O'Keefe along the ride home, correct?

9 A John O'Keefe had texted my wife and my wife called him.
10 He was asking where to, where to was the address of the
11 house so she called him to tell him.

12 Q And you knew that he was asking that because the
13 Bluetooth of the car was connected to her phone, correct?

14 A I believe the Bluetooth was on. Again, I could hear
15 his conversation. My assumption is the Bluetooth was on.

16 Q You could hear both sides of the conversation, correct?

17 A I could hear John's call, yes.

18 Q Your wife and John, correct?

19 A Yes, I was sitting next to my wife, I could hear her.

20 Q And you heard John tell your wife that he was planning
21 to go to 34 Fairview, correct?

22 A Yes.

23 Q He had told your wife in your presence that he and
24 Karen would meet your wife and you there, correct?

25 A He said, we're on our way.

1 Q And you knew again that the plan was to go inside 34
2 Fairview, correct?

3 A Yes, that was the plan.

4 Q You heard your wife tell John that 34 Fairview is off
5 Chapman Street, correct?

6 A Either I was also talking, so I don't know if my wife
7 was repeating but yes, we did say off Chapman Street.

8 Q It could have been you, it could have been your wife?

9 A Yes.

10 Q But you told him it was off Chapman Street, right?

11 A That's correct.

12 Q And then your wife hung up with John at least
13 temporarily, but then John called back, correct?

14 A Yes, that's correct.

15 Q He indicated he needed more specific directions to 34
16 Fairview, correct?

17 A Yes.

18 Q And then you heard your wife or maybe you participated
19 in the conversation, I won't rule that out, but between the
20 two of you, you did give him more specific directions,
21 correct?

22 A Yes, we did.

23 Q And either you or your wife and you can correct me if
24 you know if it's one or the other, but one of you told him
25 to go down Chapman and take Fairview as if they were going

1 to (c)'s house, correct?

2 A Yes, we had mentioned go down Chapman to Fairview, if
3 you know where (c) lives drive past (c)'s street, the
4 house will come up on your left.

5 Q And I believe you previously explained that (c) was a
6 friend of John's niece (c) and also your daughter,
7 (c), correct?

8 A Yes, that's correct.

9 Q That was a good way to orient him as to where to go,
10 correct?

11 A Yes.

12 Q Once you did that John O'Keefe never called back for
13 any clarification, correct?

14 A Yes, not to my recollection.

15 Q With regard to your state of mind based on that
16 conversation and the instructions that either you or your
17 wife or both of you gave John, you certainly assumed that
18 John and Karen would be arriving at Fairview coming from
19 the Chapman Street direction, correct?

20 A That was my assumption.

21 Q Okay.

22 A As I had stated yesterday there's multiple ways to go,
23 but that was my assumption.

24 Q And it was an educated assumption based on the
25 conversation that you had, correct?

1 A Yes.

2 MR. YANNETTI: May I approach the witness, Your
3 Honor?

4 THE COURT: Okay.

5 Q I'm going to hand the witness a document. I've handed
6 you something. If you could take a look and tell the jury
7 whether you recognize what that depicts?

8 A Yes, this is a map showing Cedarcrest Road intersecting
9 with Fairview Road on the opposite side towards Chapman
10 Street intersecting with Fairview, as well as on the
11 streets in the, it's called the Cedarcrest neighborhood, in
12 the Cedarcrest neighborhood.

13 Q Realizing that you don't have a compass or ruler, does
14 it appear to be generally to scale in terms of where the
15 roads are?

16 A Yes.

17 Q And it appears to be a fair and accurate depiction of
18 the layout of particularly Cedarcrest, Fairview and Chapman
19 Street?

20 A Yes.

21 MR. YANNETTI: I would offer that, Your Honor.

22 THE COURT: Is there any objection?

23 MR. LALLY: No, Your Honor.

24 THE COURT REPORTER: Exhibit 86, Your Honor.

25 (Whereupon Exhibit No. 88, Map, was marked as an exhibit.)

1 THE COURT: Why don't we hand over the one other
2 one?

3 MR. YANNETTI: May I display that to the jury, Your
4 Honor?

5 THE COURT: Okay.

6 THE COURT REPORTER: Your Honor, that will be
7 Exhibit 88.

8 THE COURT: Thank you.

9 Q What is displayed on the screen, Mr. McCabe, does that
10 appear to be what I just showed you as Exhibit 88?

11 A Yes.

12 Q Do you see that there's a red bubble there, does that
13 have any meaning to you as you look at the map?

14 A Yes, that'd be the location of 34 Fairview.

15 Q As we look at the map Cedarcrest is up the top and
16 Chapman is down the bottom?

17 A That is correct.

18 Q With regard to the directions that you gave, you and
19 your wife gave to John O'Keefe, if they were coming as you
20 directed them on Chapman Street, would they be taking a
21 right onto Fairview or a left?

22 A The way that we mentioned, they'd be taking a left.

23 Q In terms of looking at this map did they they'd be
24 traveling on Chapman Street really from the left to the
25 right as you look at Exhibit 88, correct?

1 A Correct, yes, left to right, correct.

2 Q And that would allow them to take a left down Fairview
3 heading towards Cedarcrest, correct?

4 A That is correct.

5 Q And you would agree with me that that would put the
6 driver's side closest to the Albert property if they just
7 kept going straight all the way to Cedarcrest, correct?

8 A Yes, the driver's side would have been closest to the
9 property.

10 MR. YANNETTI: You can turn the lights back on.

11 Q So you agree me that your state of mind was that's the
12 direction that they would go in?

13 A That's what I thought they would have. That's how I
14 thought they would have come into the neighborhood.

15 Q Correct, but you never saw the black SUV traveling in
16 that direction or parked in that direction, correct?

17 A That's correct.

18 Q That would mean in order for the SUV to be facing in
19 the other direction one way would be for it to be to make a
20 three-point-turn, correct?

21 MR. LALLY: Objection.

22 THE COURT: I'll allow it.

23 A You're saying if they came down from Chapman and then
24 spun around facing back up towards Chapman? Is that what
25 you're asking? Yes, at some point she would have had to

1 turn around.

2 Q Or do a three-point-turn, correct?

3 A She could do a three-point-turn, she could just loop
4 around at Cedarcrest and come back up, either one, right.

5 Q And a three-point-turn would be consistent with what
6 these V-shaped tire tracks that you saw when you looked out
7 the front of Brian Albert's house, correct?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 Q When you were interviewed by Michael Proctor on January
11 29th of 2022, you had not spoken with Ryan Nagel, correct?

12 A No.

13 Q So it's fair to say you did not know what, if anything,
14 Ryan Nagel had seen in terms of how or what direction the
15 black SUV arrived in, correct?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 Q When you spoke to Michael Proctor on January 29th of
19 2022, the phone conversation that your wife had with John
20 O'Keefe that you were either participating in or listening
21 to, that was regarding the directions, that was fresh in
22 your mind on January 29th, correct?

23 A Yeah.

24 Q Those directions had just been given to John, you know,
25 the night before or really hours before, correct?

1 A Yes.

2 Q So, on January 29th when you're talking with Michael
3 Proctor believing that John had driven down Chapman Street,
4 you were trying to square in your own mind how the vehicle
5 wound up in the other direction when you looked out of the
6 house, correct?

7 MR. LALLY: Objection.

8 THE COURT: Were you?

9 A Can you just repeat that again? I think I heard it. I
10 just want to make sure.

11 Q Sure. It wasn't a great question. I'll see if I can
12 make it any better. You're talking with Michael Proctor on
13 January 29th in the afternoon, correct?

14 A Yes.

15 Q He's asking you about the positioning of the black SUV,
16 among other things, correct?

17 A Yes.

18 Q Again, getting to your state of mind, your state of
19 mind was that, you know, you gave these directions, you or
20 your wife, gave the directions to John and you're thinking
21 he came down Chapman but you never saw the vehicle in that
22 direction, but only in the other direction facing towards
23 Chapman, is that fair?

24 A Yes.

25 Q And so you're naturally trying to square in your own

1 mind, trying to make it make sense as to how that happened,
2 correct?

3 MR. LALLY: Objection.

4 THE COURT: You can answer that. Were you trying
5 to square that in your mind, sir?

6 A I wasn't trying, I don't know if I was trying to square
7 it, I just knew that for some reason her vehicle was facing
8 up Chapman. He's asking, I didn't know what she did. I
9 just know her vehicle was facing up Chapman.

10 Q And to you that was the significance of the V-shaped
11 tire tracks when you were talking to Proctor, right?

12 MR. LALLY: Objection.

13 THE COURT: Was it?

14 A I recall and said there was V-shaped tire tracks and I
15 believe the question was could it be consistent with a
16 three-point-turn. I said it could be, but I didn't know if
17 it was a three-point-turn. It could be, because it was
18 weird tracks again, I did not see the vehicle.

19 I don't know if she pulled in the driveway and turned.
20 I don't know if she went to Cedarcrest and turned. I don't
21 know if she did a three-point-turn. I have no idea.

22 Q One last question on this three-point-turn. You
23 offered the V-shaped tire tracks as an explanation for what
24 could have happened, correct?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow that.

2 A I have stated there was V-shaped tire tracks. I didn't
3 say it was a three-point-turn.

4 Q Well, you'd agree with me in any case that if John and
5 Karen entered from Cedarcrest and you saw them when you saw
6 them there'd be no need for a three-point-turn, correct?

7 A You're saying if she didn't come from Chapman, she came
8 from the other side, Cedarcrest, there would be no need for
9 a three-point-turn or any type of turn because she was
10 already facing that way.

11 Q That's right. If she came from Cedarcrest she's
12 already in the very direction that you saw the black SUV
13 when you looked out, correct?

14 A Yes, that's correct.

15 Q Now, your testimony during this trial is that you were
16 looking straight out from the house to the street and, you
17 know, again, I understand your qualification, it could have
18 been three feet this way or three feet that way, but your
19 memory is that the car was essentially right in front of
20 you, give or take, the first time you saw it?

21 A My memory is the car was right in front of the front
22 door, yes.

23 Q Okay, and you were looking straight at it, correct?

24 A As I stated earlier, the first time I looked out I
25 don't recall if I was looking straight out from the front

1 door or if I was peeking out through the window, but my
2 sight would have it lined up in front of the front door.
3 So, if I looked out from the front door then it would have
4 been, yes, straight in front of it.

5 Q And you would agree with me that when you were looking
6 at the vehicle from wherever you were looking at it, you
7 were looking straight over the front lawn, correct?

8 A I would have been looking over the lawn, correct. I
9 was focused on the vehicle.

10 Q And the V-shaped tire tracks would --

11 THE COURT: Hold on, Mr. Yannetti.

12 MR. YANNETTI: Sorry.

13 A I said I was focused on the vehicle.

14 MR. YANNETTI: I didn't know that he was not done
15 with his answer. My apologies.

16 THE WITNESS: My fault.

17 THE COURT: We only can have one person speaking at
18 a time. The court reporter can't be expected to have two
19 different people at the same time. Please be cautious.

20 MR. YANNETTI: I will try, Your Honor.

21 Q Did you get your full answer out, sir?

22 A I did.

23 Q Okay. You would agree with me that the V-shaped tire
24 tracks were farther away from you than the front lawn?

25 A Yes, they were on the road.

1 Q And if you were able to see the V-shaped tire tracks
2 you certainly were able to clearly see the Albert's front
3 lawn?

4 A Correct. As I mentioned, I was looking over the lawn,
5 but I'm assuming the lawn was somehow in my visibility. I
6 wasn't focusing on the lawn.

7 Q Okay. I'm going to try that question again and see if
8 I can get a yes or no answer. If you were able to clearly
9 see the V-shaped tire tracks you were certainly able to
10 clearly see the Albert's front lawn, correct?

11 A If I looked at it. It's a confusing question. As I
12 said, I was focused on the road. I wasn't looking at the
13 lawn.

14 Q Let me be clear, I'm not asking you if you looked at
15 it, I asked if you were able to clearly see it?

16 A I would be able to, yes.

17 Q And when you looked out at that black SUV and saw the
18 V-shaped tire tracks you did not see a 6'2" man lying on
19 the front lawn, correct?

20 A No, I did not.

21 Q And at no point in time whenever you looked at that
22 black SUV did you see John O'Keefe inside the vehicle,
23 correct?

24 A No, I did not see John in the vehicle.

25 Q At no point in time did you hear any yelling outside 34

1 Fairview, correct?

2 A No, I did not.

3 Q At no point in time did you hear any scream of pain
4 outside 34 Fairview, correct?

5 A No, I didn't.

6 Q At no point in time did you ever hear any crash noises
7 outside 34 Fairview?

8 MR. LALLY: Objection.

9 THE COURT: I'll allow it.

10 A No.

11 Q And last question on this point, at no point did you
12 hear any noises at all outside 34 Fairview that attracted
13 your attention?

14 A No, there was music playing in the house so I didn't
15 hear anything.

16 Q Okay. Now, after being at the Albert home for a period
17 of time early that morning, you left the home approximately
18 1:40 a.m. or so?

19 A Yes, give or take, 1:40-1:45. I don't know the exact
20 time.

21 Q And you walked out with your wife, Jennifer McCabe, and
22 two of Brian Jr's., friends, correct?

23 A Yeah, Brian's two friends were joining Jennifer and I.
24 We were driving them home.

25 Q And whether you knew their names or not that night you

1 subsequently learned their names to be Sarah Levinson and
2 Julie Nagel?

3 A That's correct.

4 Q You all came out of the house together, correct?

5 A Yeah. I don't recall who was where when we walked to
6 the car but we all left the house at the time.

7 Q And directly in front of all of you was the front lawn,
8 correct?

9 A If I was to walk straight out the front door, yes, the
10 lawn was in front of me.

11 Q When you were walking out the black SUV was gone,
12 correct?

13 A Yes, that's correct.

14 Q And when you first came out of the house facing that
15 front lawn you didn't see a black baseball cap, correct?

16 A That's correct.

17 Q Or a black sneaker, correct?

18 A That's correct.

19 Q Or 45 pieces of red plastic taillight, correct?

20 A That's correct.

21 Q Or even one, correct?

22 A That's correct.

23 Q And once again you didn't see a 6'2" man lying on a
24 front lawn, correct?

25 A No, I wish I did, but I didn't.

1 Q As you were walking out with your wife and these two
2 other women none of them yelled that they saw anything like
3 that, correct?

4 A Correct.

5 Q Then you all piled into the vehicle, which was in the
6 driveway, correct?

7 A Yes.

8 Q You and your wife got into the front, the driver's seat
9 and the passenger's seat, correct?

10 A Yes, I was in the driver's seat and my wife was in the
11 passenger's seat. I had to brush off the car, but that's
12 where we sat.

13 Q The other two women who were friends with Brian Jr. got
14 into the second row passenger's seat, correct?

15 A Yes.

16 Q And I believe your testimony is you don't know who was
17 where within that but they did get in there?

18 A They were behind us. I don't know who sat in what
19 seat.

20 Q Once you got inside the vehicle is that when you
21 realized that you had left something back into the house?

22 A I don't recall leaving something in the house.

23 Q I'm sorry?

24 A I don't recall leaving something in the house. If I
25 did, I did. I don't recall leaving something in the house.

1 Q You don't recall going back into the house?

2 A No, I don't recall going back into the house.

3 Q If you went back into the house the front lawn would
4 have been directly in front of you from the driveway,
5 correct?

6 A The lawn would have been to my left and I would have
7 went up the walkway to the house.

8 Q Right, and that was my next question. When you went up
9 the walkway the front lawn would have been to your left,
10 right?

11 A Yes, that's correct.

12 Q And then coming out you would have had the same view
13 that you had the first time, correct?

14 A Yes, I would have come back out the same way down the
15 steps to the left.

16 Q Without going through all the various items that I
17 asked you about in terms of not seeing on the front lawn,
18 the sneaker, the cap, the taillight, et cetera, you didn't
19 see any of those stuff at any point the second time,
20 correct?

21 A Correct, I did not see anything.

22 Q So now you're finally back in your vehicle and you are
23 backing out of the driveway, correct?

24 A Yes.

25 Q Is it fair to say that to drop the women off your plan

1 was to head towards Chapman Street?

2 A Yes, that's what we did.

3 Q Which would mean that as you back out of the driveway
4 the rear-end of your car would have been facing towards
5 Cedarcrest?

6 A Correct.

7 Q And then you would straighten out and now you've got a
8 straight shot up towards Chapman Street, correct?

9 A Yes.

10 Q And it would also mean that you drove the length of the
11 Albert's property, correct?

12 A Yes.

13 Q While you did that, sir, Julie Nagel never said what
14 was found, did she?

15 A I did not hear Julie say that.

16 Q She never said she had seen a black object, correct?

17 A I did not hear her say that.

18 Q She never said that she saw a black blob, correct?

19 A I did not hear her say that.

20 Q And she didn't say that the black blob that she
21 supposedly saw was five or six feet in length, correct?

22 A Again, I did not hear it.

23 Q And she never said that she might have seen a person,
24 correct?

25 A I did not hear her. Are you talking about in the car?

1 Q Correct.

2 A Yeah, I did not hear say it in the car.

3 Q And you were right there driving, correct?

4 A I was driving, obviously focused on the road, the
5 windshield wipers. It was snowing pretty heavily.

6 Q You didn't have ear plugs in?

7 A I didn't, but they were all talking in the car.

8 Q You didn't have ear plugs in?

9 A No, I didn't.

10 Q Certainly not the noise cancellation ear plugs,
11 correct?

12 A Correct, I did not have ear plugs.

13 Q And you never stopped the car because you never heard
14 Julie Nagel say anything about anybody being in trouble,
15 correct?

16 A I did not hear her say it.

17 Q Okay. You woke up the next morning as you said, to
18 screaming, correct?

19 A Yeah.

20 Q The screaming was so loud that you thought that the
21 person screaming was actually in your bedroom, correct?

22 A That is correct.

23 Q And it startled you, fair to say?

24 A Yes, it did.

25 Q And then ultimately you learned that Karen Read ended

1 up in your driveway, correct?

2 A Yes.

3 Q You could hear her screaming outside, correct?

4 A I could hear her outside, correct.

5 Q She was hysterical?

6 A She was screaming, Jen, she just kept repeating Jen,
7 loud.

8 Q In a hysterical manner?

9 A Yeah, Jen, Jen, yes.

10 Q And she was screaming so loud, that she was in danger
11 of waking up the whole neighborhood, correct?

12 A She was loud, correct.

13 Q And other than screaming, Jen, Jen in that hysterical
14 tone, you really couldn't make out her words a lot of the
15 time, correct?

16 A Not when she was outside my house, no.

17 Q Skipping ahead to when you went back to Fairview that
18 morning, it's fair to say that when you went, did you say
19 that you went inside Fairview at maybe around 7:00 a.m., is
20 that a good estimate?

21 A Yeah, I don't know the exact time but I would say give
22 or take, it could be a little before or a little after, but
23 somewhere in that vicinity.

24 Q I believe you testified that the only people inside
25 that you saw there were your wife, Brian Albert and Nicole

1 Albert?

2 A Yes.

3 Q In addition to Officer Lank?

4 A Officer Lank, that moment that's who I recall seeing
5 there.

6 Q And you didn't know where Brian Jr. was, whether he was
7 sleeping, but you didn't see him?

8 A I don't recall seeing him at that moment, no.

9 Q And Officer Lank was the only police official that you
10 saw inside, correct?

11 A At that moment, correct.

12 Q Okay. Now, in the days after January 29th, you
13 participated in a group text exchange with three other
14 people, do you recall that?

15 A Could you name those three people?

16 Q Sure. You had a group text chat going with your wife,
17 Jennifer McCabe, your brother-in-law, Brian Albert, and
18 your sister-in-law, Nicole Albert, correct?

19 A Oh, yeah.

20 Q I'd like to ask you some questions about that group
21 text chat if I might.

22 A Sure.

23 Q You would agree with me that on February 1st of 2022,
24 that was three days after John O'Keefe passed away,
25 correct?

1 A Yes.

2 Q And at some point on February 1st of 2022, you were
3 physically either at or near the Albert home at 34 Fairview
4 in Canton, correct?

5 A I could have been. I don't recall if I was there.

6 Q Do you recall watching what investigators were doing in
7 the neighborhood on February 1st?

8 A I do not. If you could show it to me it could maybe
9 refresh the memory. I do not recall that specific day.

10 Q You don't recall monitoring what troopers were doing in
11 the neighborhood?

12 A I was not monitoring anything that the troopers were
13 doing. If I had driven down the street dropping someone
14 off or picking somebody up and saw the troopers, then I saw
15 the troopers. I was not monitoring anything.

16 Q Directing your attention to 1:34 p.m. and 27 seconds,
17 you texted your wife, Brian Albert and Nicole Albert quote:
18 "Troopers back out front but in front of Asian house." Did
19 you not?

20 A If I texted that. If you could show it to me.

21 MR. YANNETTI: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. YANNETTI: 02150. Mr. Lally, I'm sorry.

24 THE COURT: No, show it to him. Show it to Mr.
25 Lally and don't reference what it is.

1 MR. YANNETTI: You'd think it was my first trial.

2 THE WITNESS: Thank you.

3 Q I'm showing you a document, sir, and look up, look at
4 it by yourself and look up at me when you're done.

5 THE COURT: Do you need glasses with you?

6 THE WITNESS: I don't use glasses but I can't see
7 this so maybe I need glasses. I'm making it out. I've got
8 it.

9 MR. YANNETTI: I do have a -- pair.

10 THE COURT: No, he says he's got it.

11 THE WITNESS: It's just dark, but I got it.

12 Q If you're struggling --

13 A I'm reading mine, the middle one?

14 Q Yes.

15 A Yeah, I got it. I see it.

16 Q Take all the time you need.

17 A Yeah, I see it.

18 MR. YANNETTI: If I may just grab it.

19 THE COURT: Yes.

20 Q Having reviewed that document is your memory refreshed?

21 A I see that I texted what you said I texted, the
22 troopers were outside of the house, yes.

23 Q Right, that's my question. This is a page that
24 contains the group text that you had with Jen McCabe, Brian
25 Albert and Nicole Albert, correct?

1 A Yes.

2 Q And in terms of the question that I asked you, you now
3 acknowledge that you testified, "Troopers back out front
4 but in front of Asian house," correct?

5 A That's correct.

6 Q Mr. McCabe, what is an Asian house?

7 A The next door neighbors to the Alberts were Asian.

8 Q Okay. So you mean that a family of Asian origin lived
9 next door?

10 A Yeah.

11 Q They were the next door neighbors to your brother-in-
12 law and sister-in-law?

13 A Correct, if you come out of Fairview they lived to the
14 right of the Alberts.

15 Q And did you know their last name was the Chungs?

16 A I had no idea. I've never met them. I don't know
17 their last names. I just knew it was an Asian family next
18 door.

19 Q You didn't feel the need to ask their names or try to
20 call them by their names?

21 A I've never met them.

22 MR. LALLY: Objection.

23 THE COURT: The objection is sustained. You know
24 what, Mr. Yannetti, let's come to sidebar.

25 (Sidebar commences:

1 THE COURT: I just want to know where you're going with
2 this. It just sounds like you're trying to show bad
3 character on this person's part.

4 MR. YANNETTI: So he says this is in a group text to
5 Brian Albert who never corrects him, and he never tells
6 him, no, that's the Chungs. It's not the Asian house, and
7 it shows, you know, Brian Albert's state of mind as this
8 text message is going on.

9 THE COURT: For what purpose?

10 MR. YANNETTI: Well, they're monitoring what's going on
11 in the neighborhood. This witness is watching what they're
12 doing, and reporting back to Brian Albert --

13 THE COURT: That's not a proper way of going at this
14 and then using the Chungs (indiscernible). That's what I'm
15 asking you.

16 MR. YANNETTI: I'm done with that. I won't pursue that
17 any further.

18 THE COURT: Yeah.

19 end of sidebar.)

20 Q When you did tell the group chat about the troopers
21 being at that house nobody asked you to clarify which house
22 you were talking about, correct?

23 MR. LALLY: Objection.

24 THE COURT: I'll allow that. Did anyone ask you to
25 clarify?

1 A Nobody asked me to clarify, that I recall.

2 Q In fact, Brian Albert responded with just a question,
3 right now, do you recall that?

4 A Yes, I think that was on the screen you just showed me.

5 Q And you responded yes, correct?

6 A Did I get to see all the texts or no?

7 MR. YANNETTI: Your Honor, with the Court's
8 permission --

9 THE COURT: Yes.

10 Q I'm going to give you the previous page --

11 THE COURT: Just give it to him.

12 Q -- in case you need it. I'll just give you one and if
13 you need the other just let me know.

14 A No problem. Thank you.

15 Q Again, read it silently to yourself and look to me when
16 you're done.

17 A Am I to assume where you said Brian Albert said,
18 "Right, right now?"

19 Q Yes, would you like to see that?

20 A Do, would that be the last one and this is the next
21 one? I'm just making sure.

22 Q I understand and I appreciate that but you tell me,
23 with the Court's permission?

24 THE COURT: Sure.

25 A Thank you. Yes, that's what I was looking for.

1 MR. YANNETTI: If I may collect the document?

2 THE COURT: Yes.

3 A I didn't read the rest of it.

4 Q No, no, take your time.

5 A Thank you.

6 Q You would agree with me that after you told the group
7 in this group text that the troopers were back out front in
8 front of that house, Brian Albert's response was right now?

9 A Yes.

10 Q And then you said yes, correct?

11 A Yes.

12 Q And then Brian Albert replied, okay, correct?

13 MR. LALLY: Objection, Your Honor, as to the
14 reading.

15 THE COURT: Is that how he replied?

16 A That's what it just said, yes.

17 Q Now, at that point you texted the group that you were
18 trying to get a picture of what you were seeing, correct?

19 A I didn't see that on the text.

20 Q And you don't deny that you said that in the text,
21 correct?

22 A Will you show me the text, please?

23 Q Oh, sure. Did you say you didn't see it in the text?

24 A I didn't see that, no.

25 Q I'm sorry. It's probably because I didn't give it to

1 you.

2 MR. YANNETTI: May I approach?

3 THE COURT: Yes. Have you shown those both to Mr.
4 Lally?

5 Q I'm showing you two pages.

6 A Okay.

7 Q Again, read it to yourself and look up at me when
8 you're done.

9 THE COURT: Do you have a phone with a flashlight
10 with you?

11 THE WITNESS: I don't have a phone on me. If I had
12 a flashlight I'll be able to see it.

13 THE COURT: Okay.

14 THE WITNESS: It's dark.

15 THE COURT: Madam Court Reporter, Mr. Clerk.

16 THE WITNESS: Thank you very much. Much better.
17 I've got it now.

18 Q Could I grab that from you; thanks. Having reviewed
19 that do you acknowledge you texted the group that you were
20 trying to get a picture of what you were seeing?

21 A Yes, I said I was going to try to take a photo.

22 Q You would agree with me that you were watching what was
23 going on, correct, on February 1st?

24 A No, I just happened to be driving through the
25 neighborhood at that moment.

1 Q So you happened to be driving through and then you
2 texted the group to tell them what you saw, correct?

3 A Yes.

4 Q And then you didn't just keep driving up the road and
5 leave the area, did you?

6 A I think I did.

7 Q Well --

8 A Unless you tell me I went back I think I did. I said I
9 was going to try to take a picture.

10 Q Right, that's my point.

11 A Yeah.

12 Q Just having seen the troopers back out there at that
13 house, in your mind you still weren't done, correct?

14 A I was going to take a picture to show them, oh, the
15 troopers are outside your house.

16 Q Right, in answer to my question, you weren't done with
17 that scene, correct?

18 A I think I was because I don't know if I took a picture.
19 I think I went through. I mentioned I was going to try to
20 take a picture. I don't know if I took a picture or not.

21 Q You didn't intend to be done at that point, correct?

22 A I didn't intend to be done?

23 Q Right, because you wanted to take a picture?

24 A I was going to take a picture to show them that the
25 troopers were outside.

1 Q Right. You wanted to continue to monitor what was going
2 on, did you not?

3 A I was not monitoring what was going on. I just
4 happened to drive by at that moment.

5 MR. YANNETTI: May we be seen at sidebar?

6 (Sidebar commences:

7 MR. YANNETTI: Your Honor, I have the entire unredacted
8 exhibit that includes the entire conversation that I would
9 like to mark for identification only. I will ask as the
10 examination goes on I'd be seeking to introduce selected
11 portions of the text exchange which have been redacted and
12 don't show any complete phone numbers, and don't show any
13 of the objectionable markings, including that one. But I'd
14 like this marked for ID at this time, if I could.

15 THE COURT: Madam Court Reporter, could you mark
16 this for Identification.

17 THE COURT REPORTER: JJ for Identification.

18 (Whereupon Exhibit JJ, Printout of Entire Group Chat, was
19 marked JJ for identification.)

20 MR. YANNETTI: I think I have ten or fifteen minutes.
21 I don't know if the Court as to --

22 THE COURT: So we'll take -- I think the jury needs a
23 break, so we'll take a recess.

24 MR. YANNETTI: Sounds good.

25 end of sidebar.)

1 THE COURT: Jurors, it seems like a good time for a
2 break.

3 THE COURT OFFICER: All rise for the jury.
4 (Jury out.)

5 THE COURT: Is there any objection from counsel if
6 Mr. McCabe brings his own phone in should he need a
7 flashlight again?

8 MR. YANNETTI: No objection.

9 THE COURT: Why don't you do that then. All right,
10 thank you.

11 THE COURT OFFICER: All rise for the Court,
12 please.

13 (Court recessed at 11:04 a.m.)

14

15

16

17 (Court in session.)

18 (Defendant is present with counsel.)

19 (Jury in.)

20 THE COURT OFFICER: Court, all rise for the jury.
21 Court is entering. Court is back in session. Please be
22 seated.

23 THE COURT: All right, can we bring Mr. McCabe back in,
24 please.

25 (Witness present.)

1 THE COURT: All right, Mr. Yannetti.

2 MR. YANNETTI: Thank you, Your Honor.

3 Q Mr. McCabe, I'm going to focus a bit of a different way
4 to hopefully make it easier on you and me and the jury.
5 I'd like to hand you, with the Court's permission, the four
6 pages that you've already reviewed, if I can have you
7 identify these, if I may approach?

8 THE COURT: Sure.

9 A Thank you.

10 Q And I'd just like you to take a look at them and just
11 confirm that's what you've already seen before we took the
12 break.

13 A Yes, these are the ones you showed me earlier.

14 MR. YANNETTI: Thank you, sir. May I approach?

15 THE COURT: Yes.

16 Q Having reviewed those, sir, did this appear to be an
17 accurate transcription of the sequence and the content of
18 the group text chat within that time frame?

19 A Yes.

20 MR. YANNETTI: I would offer that, Your Honor.

21 THE COURT: The only concern is I don't want to
22 give the jury something they need a flashlight to read.

23 MR. YANNETTI: Well, my next --

24 THE COURT: So can I see it?

25 MR. YANNETTI: Of course.

1 THE COURT: Why don't I see counsel up here.

2 THE COURT REPORTER: KK for Identification, Your
3 Honor.

4 (Whereupon Exhibit KK, Four Pages of Group Chats, was
5 marked for identification.)

6 (Sidebar commences:

7 THE COURT: All right.

8 MR. YANNETTI: So my next move would be to display it.

9 THE COURT: All right. So are you objecting to this
10 content coming in? This can't go to the jurors. I mean,
11 you can't read it, but are you objecting to the content if
12 we get it lightened or something?

13 MR. YANNETTI: Are you saying because it's not legible.

14 THE COURT: Right. That's what I said -- I can't admit
15 an exhibit that the jurors need a flashlight to read it.

16 MR. JACKSON: We just, as a matter of protocol, the
17 reason that it's so awful is because there's like three --

18 THE COURT: Right.

19 MR. YANNETTI: Because we had to redact it.

20 MR. JACKSON: However, I will say if it's any
21 assistance to the Court and possibly to the jurors, the
22 unredacted version can be shown on the TV is very legible.
23 These are awful.

24 MR. YANNETTI: The unredacted version has the phone
25 numbers visible.

1 MR. JACKSON: I said the electronic.

2 MR. YANNETTI: I don't need to argue with you. Oh,
3 okay.

4 MR. JACKSON: (Indiscernible) paper copy is awful.

5 THE COURT: What's the Commonwealth's position -- if
6 this were legible, would there be an objection to it?

7 MR. LALLY: I have some concerns about hearsay from
8 other people's statements (indiscernible).

9 THE COURT: I have concerns about statements with his
10 wife. Is it all a group chat?

11 MR. YANNETTI: Yes, but I'm not introducing the
12 statements between him and his wife, and, again, yeah, it's
13 all a group chat. There are other people on the group
14 chat. It's not just a husband/wife communication.

15 THE COURT: What do you want to put up on the screen
16 and we can deal with it -- so is there an objection or not?

17 MR. LALLY: Yes.

18 THE COURT: What do you want to put up on the screen?
19 Is it just what he has already said?

20 MR. YANNETTI: Yes.

21 THE COURT: All right. So that's already in evidence.
22 Just what he said you can display.

23 MR. YANNETTI: And I point out what was said to him.

24 THE COURT: So just what's already in evidence?

25 MR. YANNETTI: Whatever is already in evidence with

1 regard to this exchange, yes.

2 THE COURT: I'll let you put those up on the screen.

3 MR. YANNETTI: Okay.

4 THE COURT: They've heard it. They'll see it on the
5 screen, so it's in evidence. This is just useless, frankly.

6 MR. YANNETTI: It's not prejudicial, though. I'm an
7 old guy, and if I put on reading glasses, I can read it.

8 THE COURT: So that's a concern that I have.

9 MR. YANNETTI: I understand.

10 THE COURT: Let's go ahead and just put up -- your
11 objection is preserved. I'm going to think about it
12 depending on --

13 MR. YANNETTI: Another way to do this --

14 THE COURT: I haven't read them, and there's an
15 objection - I need to read it.

16 MR. YANNETTI: I understand. If there's -- if we're not
17 going to introduce the specific text, we can agree upon a
18 transcript we can prepare to send to them so that they can
19 read it by way of stipulation.

20 THE COURT: Or something. But I will let you display
21 only what's already in evidence.

22 MR. YANNETTI: Understood.

23 THE COURT: There's an objection to this, so I'm not
24 letting KK in yet. It's here. We can tie up the loose
25 ends later.

1 MR. YANNETTI: Sounds good.

2 end of sidebar.)

3 Q I'm going to display the first page, 2150. How is
4 your distance vision, are you able to read what's on the
5 screen?

6 A I don't know why it's in blue. Can I have them in
7 front of me while you're displaying them? Please?

8 THE COURT: Yes.

9 THE WITNESS: Thank you very much.

10 THE COURT: Feel free to use the flashlight.

11 MR. YANNETTI: Yes, they are --

12 THE WITNESS: Oh, yeah, that's much better.

13 Q Much better?

14 A Yeah.

15 Q Okay, now we can all see it. With regard to your
16 initial text exchange that we talked about can you read
17 what you texted at 1:34 and 27 seconds in the afternoon of
18 February 1st of 2022?

19 A Yes. Do you want me to?

20 Q Yes, please.

21 A Oh. "Troopers back out front but in front of Asian
22 house. Looks like more has been dug up there for at least,
23 or at least looks like it.

24 Q Okay. And if basically you go down the page, this is
25 the responses, and who was it that responded to your

1 notification that the troopers were back out front?

2 A That would be Brian Albert.

3 Q Brian Albert, Sr.?

4 A Yes.

5 Q And his response was?

6 A Right now?

7 Q At that was at 1:34 p.m. and 45 seconds?

8 A Yes, it was.

9 Q And you took that to be a question, correct?

10 A Yeah, asking, right now, yes.

11 Q We can move to the next exchange. Yes, 2151, please.
12 Yes, please. And you responded to Brian by saying what his
13 question is about right now?

14 A I responded, yes.

15 Q And that was at 1:34 p.m. and 56 seconds?

16 A Yes.

17 Q You would have still been on scene at that time?

18 A I'm not sure if I was still on scene but I was
19 obviously --

20 Q In the area?

21 A -- it was in the area. I must have been in the area,
22 correct.

23 Q And the next exchange, Mr. Bates. And then who
24 responded to you?

25 A Brian Albert again.

1 Q And his response was?

2 A Okay.

3 Q Do you have a memory as to whether or not Brian Albert
4 was on scene at that time, or if he was somewhere else?

5 A I don't have a memory of where Brian was at that time.

6 Q Given the fact that you're saying troopers are out
7 front and he's asking, "right now" is there --

8 A I'd assume he's somewhere else, yeah.

9 Q The next exchange. Okay. And your response to him or
10 your response to the group, I should say, was what?

11 A I had to pick up a car so drove through.

12 THE COURT: So this is a little further than we
13 talked about.

14 MR. YANNETTI: I know we're getting to the next.

15 THE COURT: So take this one down, please.

16 MR. YANNETTI: If I may just have a moment, Your
17 Honor. I'm sorry. The second bubble, please, Mr. Bates,
18 on 2152.

19 Q Okay. Now we're at 1:35 p.m. and 16 seconds, Mr.
20 McCabe?

21 A Yes, that's correct.

22 Q Your text to the group of you, your wife, Brian and
23 Nicole Albert is what?

24 A Trying to get pictures.

25 Q At this point I ask that the next bubble be displayed

1 and then I'm going to skip to the bubble after that once
2 you see it. The next bubble comes from Brian Albert?

3 A Yes, Brian Albert.

4 MR. LALLY: Objection.

5 Q That's at 1:35 and --

6 THE COURT: Mr. Yannetti --

7 MR. YANNETTI: I'm sorry?

8 THE COURT: The screen speaks for itself. If it
9 doesn't then the witness can tell us.

10 MR. YANNETTI: Of course.

11 Q What time is that at?

12 A 1:35:32.

13 Q And his response, does that appear to be a typo?

14 A P-K, I'm assuming.

15 Q All right, the next bubble after that, it should be
16 21:53, please, at the top? That is from whom?

17 A Brian Albert.

18 Q And the time there, are you able to make that out?

19 A Does that say 1:35:34 or 1:38:34?

20 THE COURT: Whatever it says. If you can't see it, you
21 can't see it. Next.

22 Q Sure. And his response was?

23 A Okay.

24 Q Does that appear to be correcting the P-K?

25 A I'd have to go back and --

1 Q The previous one --

2 THE COURT: Next.

3 MR. YANNETTI: Sure. All right, we can take that off
4 for a minute.

5 Q I'd like to just go over two more areas of these group
6 chats with you. You would agree with me that later that
7 same day on February 4, the four of you: you, your wife,
8 Brian Albert, and Nicole Albert discussed in that group
9 chat the fact that Michael Proctor was talking to Kerry
10 Roberts over the phone, correct?

11 MR. LALLY: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q At 3:01 and 48 seconds you commented on the interview
14 of Michael Proctor with Kerry Roberts, did you not?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 MR. YANNETTI: May we be seen?

18 THE COURT: Okay. Jurors, feel free to stand up
19 and stretch.

20 (Sidebar commences:

21 THE COURT: All right. Mr. Lally's what the objection?

22 MR. LALLY: First and foremost, I have no idea what
23 he's talking about because I haven't been shown what he's
24 looking at.

25 MR. YANNETTI: Well, he's not looking at anything yet,

1 but -- and Mr. Lally has this information because it was
2 provided to both sides. By at 3:01 and 48 seconds on
3 February 1, this witness said, "That it's very weird that
4 she's been barely interviewed. The whole dead comment was
5 just told."

6 THE COURT: The whole what?

7 MR. YANNETTI: The whole dead was just told. I was
8 supposed to have them talk last night, and I forgot to tell
9 Proctor to call her. So this is not being offered for the
10 truth of the matter asserted. It's not hearsay, therefore.

11 THE COURT: So tell Mr. Lally where you found it.

12 MR. YANNETTI: It's on page 02160. And then I'm going
13 to be doing three pages -- zero --

14 THE COURT: Mr. Yannetti, you told me ten minutes, that
15 was fifteen minutes ago. I know we took some time at
16 sidebar, but.

17 MR. YANNETTI: Right. Well, I just have two more
18 areas --

19 THE COURT: Instead of telling me you have two more
20 areas, just ask the questions.

21 MR. YANNETTI: Fine. And then after that, it says, to
22 alert counsel, 2160 from 2162 and then 2148 to 2149.

23 THE COURT: Do you have them in front of you because
24 you've got your notes there?

25 MR. YANNETTI: I do. I do.

1 THE COURT: Can you give those to Mr. Lally?

2 MR. YANNETTI: Yes.

3 THE COURT: So you can see what he's doing. Sort of an
4 aside, please don't have your assistant who's doing the
5 screen highlight the proposed answers. He can highlight
6 what you're asking, but he shouldn't highlight the answers.

7 MR. YANNETTI: I'll tell him. Thank you. It's 48 and 49
8 and then that's it.

9 THE COURT: Is there an objection?

10 MR. LALLY: Same objection, Your Honor.

11 THE COURT: Which is?

12 MR. LALLY: Hearsay.

13 THE COURT: Are they his messages --

14 MR. YANNETTI: They are.

15 THE COURT: -- regarding -- what's the purpose of them
16 if it's not hearsay, what's the purpose of them?

17 MR. YANNETTI: It's to prove that they are getting
18 their stories straight, that he is monitoring what the
19 troopers are asking Kerry Roberts, that they're trying to
20 maintain control of the narrative here. It goes to his
21 state of mind, Brian Albert's state of mind, Jen McCabe's
22 state of mind. It goes to all those states of mind. I'm
23 offering it for the truth because I'm not saying that it's
24 very weird that she has (indiscernible) that's the truth.

25 THE COURT: All right. So I'll let you do this, but you

1 have to do it in a more succinct. You're losing the
2 jurors, Mr. Yannetti.

3 MR. YANNETTI: I'm trying. I'm just not getting
4 cooperation from the witness, so.

5 THE COURT: Shocking, right? Cross-examination.

6 MR. YANNETTI: I understand. I understand.

7 THE COURT: Let's move it along, okay?

8 end of sidebar.)

9 THE COURT: So I'd like you to not leave the
10 witness in the dark. If there's something that he can
11 have?

12 MR. YANNETTI: Of course.

13 Q Sir, what I'm going to do now, sir, is to hand you
14 three more pages and ask if you can identify those.

15 THE COURT: All right, Mr. McCabe, generally do you
16 recognize this?

17 THE WITNESS: Yes, I'm just matching up, yup.

18 THE COURT: Okay, go ahead, Mr. Yannetti.

19 Q Okay, the pages that I handed to you and that you now
20 have in your possession, those from the same group chat
21 that you identified earlier, correct?

22 A Yes, that's correct.

23 Q It appears to have the same sequence and content of the
24 group chat, as well?

25 A Yes.

1 MR. YANNETTI: I would offer that, Your Honor.

2 THE COURT: Over the Commonwealth's objection,
3 again, I'm not sending anything to the jury that they can't
4 read.

5 MR. YANNETTI: Understood.

6 THE COURT: So let's mark this for identification.

7 THE COURT REPORTER: That will be LL for
8 Identification.

9 THE COURT: The substance of those on each
10 individual one would be question by question.

11 MR. YANNETTI: Understood.

12 (Whereupon Exhibit LL, Pages of Texts from Group Text, was
13 marked for identification.)

14 MR. YANNETTI: Mr. Bates, with regard to page 2160
15 I'm looking for the second bubble.

16 THE COURT: Do you have an extra copy for me to
17 follow along?

18 MR. YANNETTI: I'm sure we do.

19 THE COURT: Mr. Yannetti, is this what was marked?
20 You're using that? All right.

21 MR. YANNETTI: I can give you an extra copy, Judge.

22 THE COURT: And it's a question by question
23 objection.

24 MR. YANNETTI: May that be displayed, Your Honor?

25 THE COURT: May what be displayed?

1 MR. YANNETTI: The content of that as an exhibit
2 and I'm asking for that --

3 THE COURT: I did not take it in. I said the
4 content on a question by question.

5 MR. YANNETTI: Oh, Yes, yes, yes, ok, all right.

6 Q You saw that at 3:01 p.m. and 48 seconds on February
7 1st that you texted quote, very weird that she's been
8 barely interviewed. The whole dead comment was just told.
9 I was supposed to have them talk last night and forgot to
10 tell Proctor to call her. Do you recall that?

11 A Yeah, I recall it, correct.

12 Q All right, those are your words, correct?

13 A Yes, they are.

14 MR. YANNETTI: May that be displayed for the --

15 THE COURT: No, it's in. We may display it later
16 but I'd like to move this testimony, sir. That's in
17 evidence.

18 Q Okay, and then in that discussion at 3:03 p.m. and 15
19 seconds it was Brian Albert who texted, Quote: Hope they
20 don't think she's making it up after the fact for some
21 reason, end quote, correct?

22 MR. LALLY: Objection.

23 THE COURT: I'll allow that.

24 A Can you read the time stamp again?

25 Q Yes, it's on page 0-2-1-6-1.

1 A Oh, I found it.

2 Q Yeah, it's in the middle. I got that time stamp
3 correct, correct?

4 A 3:03:15.

5 Q Correct, and I read that accurately? Hope they don't
6 think she's making it up after the fact?

7 A Yes, that's correct.

8 Q And then less than a minute later at 3:05 and 32
9 seconds you replied, Yes, she was hardly interviewed and I
10 think just answered what was asked. Oh, I'm sorry, strike
11 that. Strike that whole question.

12 I skipped his next response which is at 3:05 and 2
13 seconds where he said: But if they barely interviewed her
14 that's on them, correct?

15 A From Brian, yes; that's correct.

16 Q Okay, now with regard to that exchange, you would agree
17 with me that you were talking about Kerry Roberts being
18 interviewed by Michael Proctor, correct?

19 A I don't want to make assumptions. Do you have the text
20 previous to this that shows that we're referencing Kerry?

21 Q I do, and I'll show you that only to refresh your
22 memory.

23 A Yeah, I didn't know. I don't want to assume something.

24 Q I understand. I'm going to show you one page and ask
25 you to look at it silently to yourself, and I've opened the

1 packet to the page. You just look at me when you're done.

2 A Again, my assumption it's Kerry. Can I go back and
3 look?

4 Q Feel free.

5 A Okay, that's what I was looking for.

6 MR. YANNETTI: May I approach?

7 THE COURT: Yes.

8 Q Did those previous pages refresh your memory about the
9 context of your group chat conversation?

10 A Yes, it did.

11 Q And certainly it was talking about Kerry Roberts being
12 interviewed, correct?

13 A Yes, it was.

14 Q And you were passing along information about that
15 interview to Brian Albert, were you not?

16 A Yes, I was letting him know that Kerry was being
17 interviewed.

18 Q And you were telling him things that she was saying,
19 correct? Remember you said the whole dead comment was just
20 told?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 Q In any case, we're going to move onto the very last
24 discussion that I'd like to ask you about. Earlier that
25 day, February 1st of 2022, at 12:50 p.m. and 37 seconds

1 Brian Albert texted the group which would have again been
2 his wife, Nicole, your wife, Jennifer, and you, and that
3 text

4 was --

5 MR. LALLY: Objection, Your Honor.

6 THE COURT: Which bubble on the screen?

7 MR. YANNETTI: 0-2-1-4-8.

8 THE COURT: On which page?

9 MR. YANNETTI: That's the page, 0-2-1-4-8, and the
10 bubble is the second of the three bubbles.

11 THE COURT: I don't have it. I don't know what the
12 objection is pertaining to. Jurors, I apologize that this
13 is taking so long. You know, Mr. Yannetti, why don't
14 you --

15 MR. YANNETTI: A copy for the Court, Your Honor.

16 THE COURT: So, you're objecting to it so I'm not
17 going to let you just say what it is. You can show it to
18 the witness. Which one is this?

19 MR. YANNETTI: Second bubble on 0-2-1-4-8. And the
20 third bubble on 0-2-1-4-8 and then the first bubble on
21 0-2-1-4-9, that's all I'll be asking about.

22 THE COURT: I'll won't allow, based on the
23 objection to the Commonwealth the second bubble on
24 0-2-1-4-8. I will allow, who is the author of the third
25 bubble?

1 MR. YANNETTI: I think --

2 THE COURT: 0-2-1-4-8?

3 MR. YANNETTI: No, the second bubble on 0-2-1-4-8.

4 THE COURT: Is not allowed into evidence.

5 MR. YANNETTI: I need to be heard on that then.

6 THE COURT: All right, I'll hear you at sidebar.

7 You know what, the jurors I'm going to send back.

8 THE COURT OFFICER: Please rise for the jury.

9 (Jury out.)

10 THE COURT OFFICER: You may be seated.

11 (Sidebar commences:

12 THE COURT: All right. So --

13 MR. JACKSON: We have to wait for Mr. Lally.

14 THE COURT: All right. So the Commonwealth objected to
15 the second bubble. I'm sustaining the objection. I won't
16 really hear you on that, but what I want to do at sidebar
17 is figure out where you're going with all of this. So
18 there's an objection to these coming in at all. I don't
19 want you to have the witness read something that's then
20 objected to and tell the jurors disregard it. Disregard
21 it. You kind of been doing a lot of that, asking questions
22 that you know, perhaps, aren't appropriate and having me
23 strike them. So I don't want to do it with this, and I'm
24 certainly not going to put these up.

25 And, Mr. Jackson, if you're doing the cross of Ms.

1 McCabe this afternoon, I expect that this part of it to go
2 much more smoothly than it's going now. So where are we
3 going with these?

4 MR. YANNETTI: I have -- I want to ask him just about
5 this bubble, that bubble, and the top bubble --

6 THE COURT: Okay. So I sustained the Commonwealth's
7 objection to that one. I will allow you to do the bottom
8 bubble. And then what's the next one?

9 MR. YANNETTI: That's it. That's the answer to that
10 bubble. That's Mr. McCabe, and then the answer comes from
11 Mr. Albert.

12 THE COURT: Okay. That's it. Then we're done with all
13 of this.

14 MR. YANNETTI: I'm done.

15 THE COURT: All right. So the Commonwealth's objection
16 is noted. Nancy, we need this marked for identification.
17 Does the witness have this in front of him at this point?

18 MR. YANNETTI: Yes, he does. And I guess the only
19 other questions is, are these documents being introduced
20 into evidence?

21 THE COURT: He's testified to those so --

22 MR. YANNETTI: I know --

23 THE COURT: I'm not letting you display them on the
24 board because this is almost a two cross-examination of a
25 witness. It's in evidence.

1 MR. YANNETTI: It's in evidence.

2 THE COURT: But you're not going to display them. The
3 witness just testified. He doesn't have to read them. You
4 can have him --

5 MR. YANNETTI: Again, just so I'm clear, it's in
6 evidence in terms of the documents, not just his testimony.

7 THE COURT: If I get a form that I am satisfied the
8 jurors can see --

9 MR. YANNETTI: Fair enough.

10 THE COURT: -- what's been testified to, you can show
11 that bubble can be in evidence.

12 MR. YANNETTI: Great. That's all I wanted.

13 THE COURT: And the Commonwealth is objecting to that?

14 MR. LALLY: Yes.

15 THE COURT: Okay. All right. So let's move this along.

16 MR. YANNETTI: All done.

17 end of sidebar.)

18 THE CLERK: Can I have the jury back, please?

19 THE COURT: If you all plan on doing this with the
20 next witness, I'd ask you to let Mr. Lally know each one of
21 these you intend to use so that we can avoid all of this.

22 MR. YANNETTI: Okay.

23 THE COURT: And if you have a copy for me that
24 would be helpful for objections.

25 MR. YANNETTI: I'll --

1 THE COURT OFFICER: Court, jurors entering. Court
2 is back in session. Please be seated.

3 THE COURT: Okay, Mr. Yannetti.

4 MR. YANNETTI: Thank you, Your Honor.

5 Q Mr. McCabe, when we broke I was just about to ask you
6 about the last exchange here. You will agree with me that
7 on February 1st of 2022 at 12:51 and 49 seconds you texted
8 the group chat to say, "Ask Chris to ask some questions"
9 correct?

10 A Yup, I'm reading it right now, yes, that's correct.

11 Q And who was the Chris you were referring to?

12 A That would be Chris Albert.

13 Q Brian's brother, correct?

14 A That is correct.

15 Q And then you then texted your wife, Brian Albert and
16 Nicole Albert, Quote, "Tell them the guy never went in the
17 house" correct?

18 A That's part of the same text, yes.

19 Q Mr. McCabe, who was the guy that you were referring to,
20 does he have a name?

21 A That would be John; John O'Keefe.

22 Q When you told the group to tell them the guy never went
23 in the house that was you talking about how you should all
24 get your stories straight, correct?

25 A No.

1 Q You would agree with me that your stories are all
2 straight in terms of the guy never went in the house,
3 correct?

4 MR. LALLY: Objection.

5 THE COURT: Can you answer that?

6 A John never went in the house. It's not a story, it's a
7 fact.

8 Q Well, when you said, "Tell them the guy never went in
9 the house" Brian Albert was on that exchange still, was he
10 not? He was still part of the group text?

11 A Yes, Brian is on the exchange.

12 Q And Brian Albert was the one to respond, wasn't he?

13 A Which page is it?

14 Q He responded, did he not?

15 A Yes, he did.

16 Q At that point you knew Brian Albert was the oldest
17 brother of the Albert family, correct?

18 A Yes, that's correct.

19 Q The oldest sibling in that family, correct?

20 A Yes, that's correct.

21 Q In his response to your instructions that his younger
22 brother Chris should say that John O'Keefe never went in
23 the house or the guy never went in the house, you would
24 agree with me that he responded with one word, correct?

25 A Yes, he did.

1 Q And in response to you saying the guy never went in the
2 house Brian Albert's response was, "Exactly" correct?

3 A Yes, that was his response.

4 MR. YANNETTI: We're done here.

5 THE COURT: Commonwealth, any redirect?

6 MR. LALLY: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. LALLY:

9 Q Now, Mr. McCabe, John O'Keefe never went in the house
10 that night; is that correct?

11 A That's correct.

12 Q And from this text communication as far as Chris Albert
13 was concerned, was Chris Albert ever at the house on that
14 night?

15 A No, he was not.

16 Q And this was something that you obviously, the death of
17 John O'Keefe occurring, how it did, where it did and why it
18 did, that was something that you discussed with your
19 family?

20 THE COURT: Would you keep your voice up?

21 MR. LALLY: Yes, I'm sorry.

22 Q This tragedy, occurrence, as far as what happened to
23 John O'Keefe, his death, where, why, how, that was
24 something that you discussed within your family, is that
25 right?

1 A Yes, that's right.

2 Q Why, why was it a discussion in your family?

3 A Are you talking about immediately after?

4 Q Yes, immediately after.

5 A No one knew what happened because John never came in
6 the house so we had no idea what happened to John.

7 Q And John was someone you were friends with, correct?

8 A Yes, that's correct.

9 Q Now, did you ever tell anybody what to say at any point
10 in time to the state police, to any investigator
11 whatsoever?

12 A No.

13 Q Did anyone in your family or in your presence ever tell
14 anyone that in front of you?

15 A No.

16 Q Now, you were asked some questions about when you were
17 looking out and you saw the SUV, correct?

18 A Yes.

19 Q And your focus, as you indicated in your testimony, was
20 on the SUV, correct?

21 A Yes, that's correct.

22 Q Now, during the time that you were looking out, did you
23 ever see a pick-up truck outside?

24 A I knew the pick-up truck was out there but again, I
25 didn't look at the pick-up. I kind of saw it but was

1 focusing on the SUV.

2 Q And --

3 A I saw a vehicle out there, let's say that.

4 Q My question is more so as far as the tire marks that
5 you were talking about in the road, was that before or
6 after the pick-up truck was there?

7 A It was after.

8 Q Now you were asked some questions about directionality
9 and thing of that nature as far as coming down Chapman or
10 Cedarcrest, correct?

11 A Yes, that's correct.

12 Q And so if someone had driven by the house and missed
13 the house and then went onto Cedarcrest, turned around,
14 presumably then they would be taking a left or a right on
15 Cedarcrest onto Fairview, is that right?

16 A Yes, if they passed the house they would have come to
17 Cedarcrest and turned around and come back onto Fairview.

18 Q And you were asked some questions about whether or not
19 you saw Mr. O'Keefe from your vantage point in the SUV; is
20 that correct?

21 A Yes, it was.

22 Q And you didn't see him, correct?

23 A I did not see him.

24 Q Could you see anyone inside from where you were?

25 A I did not see anybody in the vehicle.

1 Q Did you see anything about the window as far as their
2 tint or anything like that?

3 A I don't recall the tint. I couldn't see inside,
4 though.

5 Q As far as any statements that Ms. Nagel made on the way
6 home, is it your testimony that Ms. Nagel didn't say those
7 statement or that you didn't hear those statements?

8 A I did not hear those statements.

9 Q Now, turning to February 1st, do you recall what you
10 were doing on that day when you drove by Fairview?

11 A I don't recall what I was doing. I don't recall
12 exactly what I did that day.

13 Q And were you going specifically by Fairview or where
14 were you going?

15 A Based off of reading these text messages I was doing
16 something, picking up a car or something it says. I don't
17 recall where, that I cut down Fairview.

18 Q Now, as far as your statement in those text messages
19 where you said, looks like more has been dug up, do you
20 recall that?

21 A I don't recall if I read it in the text message.

22 Q Do you recall what that was in regard to as far as what
23 were they digging?

24 A Sorry, I do recall. They dug out the snow. It looked
25 like the snowbank. It looked like there was more snow dug

1 out around the scene.

2 Q And by scene, you mean around like where the flagpole,
3 fire hydrant, that was?

4 A Correct, yes.

5 Q And do you recall any sort of change in the weather
6 between the 29th and February 1st?

7 A I believe the temperature rose, so it was starting to
8 melt, if I recall.

9 Q Now, when you and your wife, your wife is talking to
10 Mr. O'Keefe, and you were giving directions, there was some
11 reference to (C)'s house, correct?

12 A Yes, that's correct.

13 Q And that was sort of used as a directionality as far as
14 Mr. O'Keefe would be familiar with where (C)'s house was?

15 A Yes, that's correct.

16 Q What, if any, relationship in the past were you aware
17 of between Mr. O'Keefe and (C), and (C)'s mother, I'm
18 sorry?

19 A At some point (C)'s parents were separated, divorced.
20 At some point Mr. O'Keefe had a relationship with (C)'s
21 mother.

22 Q And after that conversation in which that was
23 referenced as far as (C)'s house, did you ever hear from
24 John O'Keefe again?

25 A Never heard from him again.

1 MR. LALLY: Nothing further.

2 THE COURT: Anything?

3 MR. YANNETTI: Just very briefly, Your Honor.

4 THE COURT: Okay.

5 RECROSS-EXAMINATION

6 BY MR. YANNETTI:

7 Q You were just asked if you ever told anyone what to
8 tell the state police or investigators and your answer was
9 no, correct?

10 A Yes, I don't recall telling anyone or anybody anything.

11 Q So with regard to your statement, tell them the guy
12 never went in the house, who is the them?

13 A Do you mind if I go back and read?

14 Q Take your time.

15 A I think I know. I just want to read it. The them was
16 Channel 4 went into D&E.

17 Q Are you done with your answer?

18 A Yeah, you just asked me who the "them" was.

19 Q And the answer is, you were instructing people on the
20 group chat to tell Channel 4 that the guy never went in the
21 house, correct?

22 A Yes, this was on February --

23 Q February 1st.

24 A -- 1st. As I said, none of us in the house had any
25 idea what happened to John

1 O'Keefe --

2 Q Okay --

3 A -- so we instructed, I was saying, we don't know what
4 happened. He never came in the house.

5 Q All right, so --

6 A That's what my statement was.

7 Q Sir, I didn't ask you for any of that just now, did I?

8 A You just asked me.

9 Q No, I asked you who the "them" was, did I not?

10 MR. LALLY: Objection.

11 A You didn't. You looked like you asked me to elaborate.

12 Q Okay. So your answer to my question is, the them was
13 your saying that Channel 4 should be told that the guy
14 never went in the house, yes or no?

15 A Channel 4 was who I was referencing, yeah.

16 MR. YANNETTI: No further questions.

17 THE COURT: All right, you are all set, Mr. McCabe.
18 I will take those documents.

19 THE WITNESS: Thank you very much. Just walk out?

20 THE COURT: Yes.

21 THE WITNESS: Okay.

22 (End of Mr. McCabe's testimony.)

23

24

25

C E R T I F I C A T I O N

I, CHRISTINE D. BLANKENSHIP, NOTARY PUBLIC, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

I, CHRISTINE D. BLANKENSHIP, FURTHER CERTIFY THAT I
NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF
THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN,
AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE
INTERESTED IN THE OUTCOME OF THIS ACTION.

Christine D. Blankenship, February 3, 2025

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